

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
Mirant Corporation's ) 00-AFC-4  
POTRERO POWER PLANT UNIT 7 )  
PROJECT )  
 )

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Stanley J. Valkosky, Hearing Officer

Michael Smith, Advisor

STAFF PRESENT

Marc S. Pryor, Project Manager

Dick Ratliff, Senior Staff Counsel

William J. Westerfield, Staff Counsel

Kevin Kennedy, Project Manager

PUBLIC ADVISER

Roberta Mendonca

REPRESENTING THE APPLICANT

Michael J. Carroll, Attorney  
Latham and Watkins

Mark Harrer, Project Director  
Mirant Americas Development, Inc.

INTERVENORS

Jacqueline Minor, Deputy City Attorney  
Ed Smelloff, Assistant General Manager, SFPUC  
Supervisor Sophie Maxwell  
Theresa Mueller  
City and County of San Francisco

Alan Ramo, Director  
Our Children's Earth  
Southeast Alliance for Environmental Justice  
Environmental Law and Justice Clinic of  
Golden Gate University School of Law

INTERVENORS

Steven Moss  
L. Joseph Boss  
Potrero Boosters Neighborhood Association/DNA

Anne Simon, Attorney  
William B. Rostov, Attorney  
Mike Thomas  
Communities for a Better Environment

Theresa Cho, Attorney  
Jody S. London  
Grueneich Resource Advocates  
Timothy Mueller  
Neighboring Property Owners Coalition

ALSO PRESENT

Becky Ota  
California Department of Fish and Game

Joe Dillon, Water Quality Specialist  
Steve Edmondson  
National Marine Fisheries Service

Will Travis, Executive Director  
Steve MacAdam, Chief Deputy Director  
Bay Conservation and Development Commission

Chris Weeks

Allison Shore

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## P R O C E E D I N G S

6:32 p.m.

PRESIDING MEMBER PERNELL: Good evening,  
this is a prehearing conference for the Potrero  
Power Plant Unit 7 Project.

Before we begin I'd like to introduce  
the Committee and ask the parties when we call on  
you to identify yourselves for the record. My  
name is Commissioner Robert Pernell; I'm the  
Presiding Member of the Committee.

Commissioner Bill Keese was unable to  
make it this evening. The Hearing Officer is Stan  
Valkosky who is up here with me to my right.

And now I'd like the -- first, we have a  
Public Adviser who is in the back. Raise your  
hand, please. We'll hear from her later.

Also, if you could put your phones on  
vibrate or turn them off.

The applicant, would you introduce  
yourselves and your party, please.

MR. CARROLL: Good evening, Mike Carroll  
with Latham and Watkins on behalf of the  
applicant.

MR. HARRER: Mark Harrer with Mirant.

PRESIDING MEMBER PERNELL: Staff.

1 That's all you have?

2 MR. CARROLL: Yes.

3 PRESIDING MEMBER PERNELL: Staff.

4 MR. RATLIFF: Dick Ratliff for staff.

5 PRESIDING MEMBER PERNELL: Okay. City  
6 and County of San Francisco.

7 MS. MINOR: Jackie Minor from the City  
8 Attorney's Office representing the City and County  
9 of San Francisco. Also in the audience we do have  
10 some clients represented, Ed Smelloff who is the  
11 Assistant General Manager for Energy Policy and  
12 Planning for the San Francisco Public Utilities  
13 Commission. And if I could turn around just to  
14 see who else is here.

15 PRESIDING MEMBER PERNELL: Will the  
16 representatives of the City and County of San  
17 Francisco please stand so we can get a -- how you  
18 doing, Ed?

19 MS. MINOR: Theresa Mueller from the  
20 City Attorney's Office is here; Theresa heads up  
21 the Energy Team in the City Attorney's Office.

22 We're expecting Supervisor Sophie  
23 Maxwell, who is a Member of the Board of  
24 Supervisors who represents the District in which  
25 the Potrero Power Plant is to be sited. She is in



1 a board meeting but she should be here shortly.

2 PRESIDING MEMBER PERNELL: Okay.

3 Citizens for a Better Environment.

4 MS. SIMON: Thank you, Commissioner  
5 Pernell; it's now Communities for a Better  
6 Environment, and I hope all the paperwork is  
7 correct. I am Anne Simon, Senior Attorney in  
8 Communities for a Better Environment. Also here  
9 sitting in the first row is Will Rostov, one of  
10 CBE's Staff Attorneys.

11 PRESIDING MEMBER PERNELL: Okay, anyone  
12 from Our Children Earth, Southeast Alliance for  
13 Environmental Justice?

14 MR. RAMO: Yes, Alan Ramo from the  
15 Golden Gate University --

16 PRESIDING MEMBER PERNELL: How are you,  
17 Alan?

18 MR. RAMO: -- Environmental Law and  
19 Justice Clinic representing Our Childrens Earth  
20 and Southeast Alliance for Environmental Justice.

21 PRESIDING MEMBER PERNELL: Potrero  
22 Boosters.

23 MR. MOSS: Yeah, hello, Commissioner.  
24 My name is Steven Moss; I'm representing the  
25 Boosters, though John DeCastro and Joe Boss

1        hopefully will be arriving; they'll take my place.

2                PRESIDING MEMBER PERNELL:   Neighbor and  
3        Property Owner Coalition.

4                MS. CHO:   I'm Theresa Cho with Grueneich  
5        Resource Advocates representing the Neighboring  
6        Property Owners Coalition.   And with me is Jody  
7        London, also of Grueneich Resource Advocates; and  
8        Timothy Mueller, who is an adjoining property  
9        owner.

10               PRESIDING MEMBER PERNELL:   Okay.   Anyone  
11        from CDFG, California Department of Fish and Game?

12               MS. OTA:   Yes.

13               PRESIDING MEMBER PERNELL:   Would you  
14        step to the mike and identify yourself for the  
15        record, please.

16               MS. OTA:   Yes, my name is Becky Ota with  
17        the Department of Fish and Game's Marine Region.

18               PRESIDING MEMBER PERNELL:   Thank you.  
19        BCDC?

20               MR. TRAVIS:   Thank you, I'm Will Travis,  
21        the Executive Director of BCDC.   With me tonight  
22        is Steve MacAdam, our Chief Deputy Director.

23               PRESIDING MEMBER PERNELL:   Welcome.   And  
24        NMFS, National Marine Fisheries Service.   I hope I  
25        got that right.

1           MR. DILLON: You did. Good evening, I'm  
2           Joe Dillon with the National Marine Fisheries  
3           Service. Steve Edmondson is also here with me  
4           this evening.

5           PRESIDING MEMBER PERNELL: Thank you.  
6           Welcome.

7           And we have Mike Smith who has joined us  
8           at the podium. He is the Advisor to Commissioner  
9           Bill Keese. And he will be representing the  
10          Commissioner this evening.

11          So on behalf of the entire Commission I  
12          want to welcome all of you to the prehearing  
13          conference of the Potrero Power Plant Unit 7.

14          By way of background, the Committee  
15          scheduled tonight's prehearing conference in a  
16          notice March 19, '02. As explained in that notice  
17          the basic purpose of the prehearing conference is  
18          to assess the parties' readiness for hearing. And  
19          that's what we want to know, whether we're ready  
20          to go forward.

21          To clarify areas of agreement or  
22          dispute; to identify witnesses and exhibits; to  
23          determine upon which areas parties desire to  
24          cross-examine witnesses from other parties; and to  
25          discuss associated procedural items.

1           To achieve these purposes we required in  
2           the notice that any party desiring to participate  
3           in tonight's conference or present or cross-  
4           examine witnesses at the future evidentiary  
5           hearing file a prehearing conference statement by  
6           April 16th, '02.

7           Timely prehearing conference statements  
8           were filed by the following: the applicant,  
9           staff, City and County of San Francisco,  
10          Communities for a Better Environment, Our Children  
11          Earth, Southeast Alliance for Environmental  
12          Justice, Potrero Boosters and Neighboring Property  
13          Owners Coalition. Those will follow in a timely  
14          manner.

15          Procedurally, tonight's agenda is  
16          basically divided into three parts. First we will  
17          discuss various options for proceeding with this  
18          case.

19          Next, and as appropriate, we will  
20          discuss matters contained in the prehearing  
21          conference statements.

22          Finally, we will provide an opportunity  
23          for the public to comment.

24          Again, this is a prehearing conference  
25          so we don't want to litigate every issue. But we

1 want to make sure that you're ready and we want  
2 all of the parties to have a fair opportunity to  
3 review your prehearing statement. And I think  
4 that's been done already.

5 After reviewing the statements it is  
6 abundantly clear that once-through cooling  
7 proposed by the applicant may be the central issue  
8 in this case. It is disfavored by staff, BCDC and  
9 various intervenors, as well as apparently  
10 California Department of Fish and Game and federal  
11 authorities. So that is a central issue that we  
12 want to get to.

13 According to at least one reading of  
14 section 25523 of the Warren Alquist Act  
15 recommendations in the BCDC report are to be  
16 incorporated by the Commission unless the  
17 recommendations are infeasible or will create  
18 greater environmental impact.

19 In considering this situation it seems  
20 at this time that there are four main options.  
21 And I want to emphasize this, because I think  
22 these are important options that we want you to  
23 consider.

24 Proceed to hearing on all topics as  
25 typically done. Do not proceed pending the final

1 biological opinion as advocated by various  
2 intervenors.

3 Proceed on topics unaffected by the  
4 choice of cooling technologies. And there are  
5 possibly, we can do the first 16 or so topics.  
6 And then assess the status of the biological  
7 opinion.

8 Or, this is the fourth, proceed on  
9 limited topics directly affected by the choice of  
10 the cooling technology such as aquatic biology and  
11 cooling options.

12 To determine the significance of impacts  
13 due to once-through cooling and whether the  
14 alternatives of hybrid or dry cooling are  
15 feasible, or would create greater environmental  
16 impacts.

17 Hearings would be largely focused on the  
18 requirement of the BCDC report, as well as  
19 appropriate analysis by applicant, staff, BCDC,  
20 CDFG, NMFS and various intervenors. These  
21 acronyms kill me and my glasses are a little  
22 fogged here, so bear with me.

23 Okay, the Committee's decision is  
24 limited, in effect, to whether the project would  
25 be certified as proposed, or must be modified to

1 incorporate an alternative to cooling technology.  
2 Witnesses from BCDC, CDFG and NMFS would obviously  
3 be extremely desirable. So we want to hear from  
4 you on the cooling technology.

5 So, at this point I'd like each party to  
6 react to these four opinions as part of your  
7 respective responses.

8 I'd also like each party to specifically  
9 address, and this is five other points. Are we  
10 ready?

11 And that is the legal effects of BCDC's  
12 report.

13 Any information on the status of the BO,  
14 biological opinion, such as expected due date. So  
15 if anyone knows the expected due date of the  
16 biological opinion we'd like to hear that.

17 Whether it is possible to separate the  
18 biological analysis from the cooling opinion  
19 analysis.

20 Identify the specific topic areas  
21 directly affected by the choice of cooling  
22 options.

23 And which must be also considered to  
24 proceed under the fourth option. So the cooling  
25 options, again, is important.

1           Indicate its preference and rationale  
2           for one of the four options identified or propose  
3           another option.

4           Okay, so all of that, I know we got some  
5           questions here. The intent is kind of to get at  
6           the central issue first, is the Committee's  
7           intent. So are there any questions on what you've  
8           just heard. Is there anything you want me to  
9           restate?

10          What the Committee will do if there's no  
11          questions is give you about ten minutes to talk to  
12          your colleagues to discuss those options. Again,  
13          what we want to do is get to the central issue  
14          first, and that doesn't mean that we're not going  
15          to cover all of them, but we really want to get to  
16          the central issue and talk about BCDC's report.

17          MS. LONDON: Commissioner Pernell, just  
18          a little --

19          PRESIDING MEMBER PERNELL: Could you  
20          step to the mike, please, and identify yourself.

21          MS. LONDON: Jody London with the  
22          Neighboring Property Owners Coalition.

23          PRESIDING MEMBER PERNELL: Um-hum.

24          MS. LONDON: Let me make sure, you said  
25          there were five -- in addition to the four



1 options, there were five areas. Can I just make  
2 sure I got those correctly?

3 PRESIDING MEMBER PERNELL: Okay.

4 MS. LONDON: One would be the legal  
5 effects of BCDC's report. Two would be is it  
6 possible to separate the biological issues from  
7 the cooling system discussion.

8 Three is identify the topic areas  
9 affected by the cooling system. And four was  
10 indicate a preference and rationale for one of the  
11 four options above.

12 And then was five?

13 PRESIDING MEMBER PERNELL: Five was any  
14 information on the status of the biological  
15 opinion, --

16 MS. LONDON: Okay, --

17 PRESIDING MEMBER PERNELL: -- such as  
18 when is its expected due date.

19 MS. LONDON: Okay, thank you.

20 PRESIDING MEMBER PERNELL: Other  
21 questions?

22 Is the gentlemen from Fisheries here?  
23 Came up a few minutes ago.

24 MR. DILLON: Yes.

25 PRESIDING MEMBER PERNELL: Is it

1 possible for you to answer the biological opinion  
2 question?

3 MR. DILLON: Not really at this time.

4 Last week we rejected the application packet, the  
5 initiation consultation we need complete. We  
6 asked for clarification on a number of issues.

7 We will also be giving a list to the  
8 Environmental Protection Agency of documents that  
9 were referenced in the preparation of the  
10 biological assessment but were not provided to us.

11 So a lot of the scheduling depends upon  
12 how quickly they respond.

13 Many of the questions we have are the  
14 same questions that your staff brought forward in  
15 their analysis of the biological effects.

16 PRESIDING MEMBER PERNELL: Okay.

17 HEARING OFFICER VALKOSKY: Mr. Dillon,--

18 MR. DILLON: Yes.

19 HEARING OFFICER VALKOSKY: -- am I to  
20 understand that essentially the 135-day clock of  
21 the biological opinion has now not started? Is  
22 that another way of looking at it?

23 MR. DILLON: That clock starts when we  
24 accept the application package as being complete.

25 HEARING OFFICER VALKOSKY: Okay, so that

1 has not yet happened?

2 MR. DILLON: So that has not started.

3 HEARING OFFICER VALKOSKY: Thank you.

4 Do you have any indication from applicant as to  
5 when they will submit the missing information?

6 MR. DILLON: No. Personally I've been  
7 on paternity leave the last few days --

8 (Laughter.)

9 PRESIDING MEMBER PERNELL:  
10 Congratulations.

11 MR. DILLON: Thank you -- and I have not  
12 spoken with the contact at the Environmental  
13 Protection Agency about this matter yet.

14 HEARING OFFICER VALKOSKY: Thank you,  
15 sir.

16 PRESIDING MEMBER PERNELL: Any other  
17 questions? Staff, can we shed some light on that  
18 at all, or do you choose to at this time? Not  
19 staff, I'm sorry, I'm looking at applicant.

20 MR. CARROLL: Yes, we did receive the  
21 request for additional information from NMFS dated  
22 April 25th, so we just received it, targeting  
23 responding to the additional information request  
24 within three weeks.

25 PRESIDING MEMBER PERNELL: And then one

1 final question, sir. Who makes the decision on  
2 adequacy, on data adequacy, whether you accept the  
3 application or not?

4 MR. DILLON: Oh, well, I'll do the  
5 initial review; and then I will take it up my  
6 chain of command. There is a Bay Area team leader  
7 who will take a look at the packet, as well as the  
8 Protected Resources Manager for the Northern  
9 California area.

10 PRESIDING MEMBER PERNELL: Okay. I'm  
11 just trying to get a sense of once you get the  
12 packet how long will it take for you to make a  
13 decision.

14 MR. DILLON: Well, depending upon how  
15 thick all the reports are that we ask for, I would  
16 expect that it wouldn't take too long. And, you  
17 know, I don't know about saying a week or two  
18 weeks, it really --

19 PRESIDING MEMBER PERNELL: Okay, I  
20 realize I'm putting you on --

21 MR. DILLON: -- depends upon what we  
22 received.

23 PRESIDING MEMBER PERNELL: -- the spot  
24 here.

25 MR. DILLON: Right.

1 PRESIDING MEMBER PERNELL: All right.

2 HEARING OFFICER VALKOSKY: Yeah, Mr.

3 Dillon, with the understanding it's around  
4 maternity leave, but are you familiar with a  
5 letter from your agency dated April 11th?

6 MR. DILLON: April 11th, --

7 HEARING OFFICER VALKOSKY: I mean I can  
8 provide you a copy --

9 MR. DILLON: Yeah, I'd have to take a  
10 peek to see which --

11 HEARING OFFICER VALKOSKY: -- at recess.

12 MR. DILLON: -- letter that is.

13 HEARING OFFICER VALKOSKY: Okay.

14 MR. DILLON: Oh, I believe that's  
15 probably the Magnuson-Stevens Fishery Management  
16 Conservation Act letter?

17 HEARING OFFICER VALKOSKY: Yes, dealing  
18 with the essential fish habitat. Can you explain  
19 to me the meaning of that letter in the minds of  
20 your agency?

21 MR. DILLON: Well, I do not handle that  
22 program personally. Although I am speaking  
23 regularly with the person who does. Unfortunately  
24 Brian Mulvey couldn't join us this evening.

25 I tell you what, if you want to give me

1 a minute I have it in my bag. I'll pull it out.

2 PRESIDING MEMBER PERNELL: Okay, well,  
3 perhaps you all can discuss that over the recess.

4 MR. DILLON: Sure.

5 PRESIDING MEMBER PERNELL: Are there any  
6 other questions in terms of what the Committee's  
7 looking for during the recess, and we'll reconvene  
8 and then move forward.

9 Okay, we'll take a ten-minute recess.

10 (Brief recess.)

11 PRESIDING MEMBER PERNELL: Back on the  
12 record. I think that the first thing the  
13 Committee wants to hear, first person, is the  
14 National Marine Fisheries, Mr. Dillon.

15 Mr. Dillon, you've had a chance to  
16 review your letter?

17 MR. DILLON: Correct. The question was?

18 HEARING OFFICER VALKOSKY: Basically how  
19 is the Energy Commission to interpret that letter,  
20 because certainly by one reading it seems that the  
21 federal authorities have ruled out the use of  
22 once-through cooling on the proposed project.

23 Basically I want to know if that's a  
24 fair reading, or what caveats there are in here in  
25 the letter, things of that nature.

1 MR. DILLON: The project, as it is  
2 currently proposed, we agree with your staff's  
3 analysis and believe that it will have significant  
4 adverse effects on biological resources of San  
5 Francisco Bay.

6 The Agency is obligated, under this Act,  
7 to make conservation recommendations to nonfederal  
8 agencies as the projects go along.

9 What this letter states is that the  
10 project, as it's currently proposed, we would  
11 recommend denying the permit or --

12 (Applause.)

13 MR. DILLON: -- the approval --

14 PRESIDING MEMBER PERNELL: Okay,  
15 please --

16 HEARING OFFICER VALKOSKY: Wait, wait,  
17 let the gentleman finish.

18 MR. DILLON: -- the permit or the  
19 approval, however it's correctly termed, in  
20 agreement with your staff's analysis.

21 Okay, let me kind of go through point by  
22 point. That's number one, denial of the permit  
23 for the plant as it is currently proposed.

24 The second portion is that should Mirant  
25 come back with an alternative cooling system we

1 would recommend that the Energy Commission make  
2 them do an analysis to try and look at getting  
3 unit 3 out of the water in the future.

4 Unit 3 is going to require a major  
5 upgrade in the next few years for air quality  
6 concerns. It may also require an upgrade under  
7 the new 316B rule coming out, the Clean Water Act  
8 316B rule for existing facilities.

9 We do not want the applicant to  
10 inadvertently preclude the possibility of removing  
11 unit 3 from the water and its impacts from the  
12 water by going with a site design for unit 7 that  
13 means that, you know, they just simply can't  
14 design unit 3 upgrade to get it out of the water,  
15 as well.

16 Pre permit obligations. We ask that the  
17 CEC not consider any premature purchases or  
18 contracts that the applicant has entered into as  
19 being a viable reason for why they have to have a  
20 once-through cooling system.

21 And the alternatives analysis, as we  
22 understand your process, your staff can really  
23 only look at, and you can really only require an  
24 applicant to do the most thorough analysis on the  
25 project as they prefer it.



1           So from what we understand is that a  
2           thorough analysis, or the most thorough analysis  
3           is often done on the alternative cooling  
4           methodologies. So we would like to see an  
5           analysis done in that manner consistent with your  
6           requirements and your procedures under the FSA.

7           HEARING OFFICER VALKOSKY: How much of  
8           the substance of these recommendations that you  
9           just delineated would likely also appear in the  
10          formal biological opinion when it issues?

11          MR. DILLON: Well, the formal biological  
12          opinion we have to get a look at the application  
13          packet that we receive. We have to incorporate  
14          our own information and make a determination of  
15          the effect of the project.

16          Depending upon what that determination  
17          is, we may recommend to the EPA that they not  
18          issue the permit for this project.

19          HEARING OFFICER VALKOSKY: Okay, let me  
20          back up and perhaps be clearer. One of your  
21          recommendations is essentially that applicant not  
22          use once-through cooling as proposed, is that  
23          correct?

24          MR. DILLON: Correct.

25          HEARING OFFICER VALKOSKY: Is that

1 recommendation likely to change in your formal  
2 biological opinion?

3 MR. DILLON: That depends upon the  
4 information that we receive, and the analysis that  
5 is conducted. I cannot prejudge the packet and  
6 the information that we are going to receive.

7 HEARING OFFICER VALKOSKY: Okay, fine.  
8 Thank you, sir.

9 PRESIDING MEMBER PERNELL: Thank you,  
10 Mr. Dillon. Also, Mr. Travis, BCDC.

11 HEARING OFFICER VALKOSKY: Mr. Travis, I  
12 would appreciate it if for the audience here you  
13 could just briefly summarize some of the chief  
14 findings in the BCDC report; and explain for the  
15 Committee's benefit how BCDC sees that report  
16 fitting into the Energy Commission process.

17 MR. TRAVIS: Well, first off, I'm going  
18 to hesitate to try to summarize a 34-page report  
19 that was adopted by our Commission. I think that  
20 would be a disservice to the Commission for me to  
21 try to extrapolate from their carefully drawn  
22 conclusions.

23 As to the import of the report, I would  
24 suggest you consult with your own staff. We were  
25 operating pursuant to the Warren Alquist Act and

1 our explicit responsibilities under that Act. So  
2 I can speak at length eloquently and poetically  
3 about the McAteer Petris Act that we administer,  
4 but I would think it would be better to hear from  
5 our own staff to explain how this report fits into  
6 your law, if that's acceptable to you, sir.

7 HEARING OFFICER VALKOSKY: Okay, but  
8 regarding your first point, is it fair to read the  
9 BCDC report as a report which rejects the  
10 applicant's proposal of once-through cooling?

11 MR. TRAVIS: Yes. I will simply read a  
12 brief part of it. The Commission determined that  
13 it is reasonable to conclude, based on the  
14 information available to date, and that was on  
15 March 21st of this year, and therefore concluded  
16 that the project is inconsistent with section  
17 66605 of the McAteer Petris Act because upland  
18 alternatives are available for the fill that  
19 satisfied the purpose of this project and the  
20 purpose of the fill pursuant to subsection  
21 66605(b).

22 The Bay Commission recommends that the  
23 California Energy Commission resolve the  
24 outstanding technical issues involved with upland  
25 cooling systems prior to rendering its final

1 decision on the project.

2 Because an alternative upland location,  
3 and that would be in this case not using once-  
4 through cooling, appears to be feasible, the  
5 Commission cannot find that the fill is necessary  
6 and pursuant to subsection 66605(c).

7 HEARING OFFICER VALKOSKY: Thank you.  
8 One final question. Were the method of cooling  
9 the proposed project changed to an upland  
10 alternative, would that trigger the need for  
11 reevaluation by BCDC? Or is the present report  
12 sufficiently broad to encompass that?

13 MR. TRAVIS: It would depend on the  
14 location of the plant. It is possible that using  
15 an upland alternative, that is not using Bay  
16 waters for once-through cooling, would actually  
17 involve a project that was more than 100 feet from  
18 the shoreline, and therefore outside of our  
19 jurisdiction entirely.

20 HEARING OFFICER VALKOSKY: Okay, but  
21 you'd have to make that determination upon seeing  
22 a new proposal, I take it?

23 MR. TRAVIS: That's correct.

24 HEARING OFFICER VALKOSKY: Thank you,  
25 sir.

1 MR. TRAVIS: Thank you.

2 PRESIDING MEMBER PERNELL: Thank you.

3 Okay, and finally Ms. Ota with California Fish and  
4 Game.

5 MS. OTA: Yes, the federal government  
6 hasn't hired me yet. It's California Department  
7 of Fish and Game.

8 PRESIDING MEMBER PERNELL: California  
9 Department of Fish and Game.

10 MS. OTA: Right.

11 PRESIDING MEMBER PERNELL: Good evening.

12 MS. OTA: Good evening.

13 PRESIDING MEMBER PERNELL: We would just  
14 like you to comment on your communication to us  
15 regarding this project.

16 MS. OTA: Um-hum. The Department of  
17 Fish and Game has written several letters to the  
18 Commission Staff on this project.

19 Again, it boils down to -- no pun  
20 intended -- to the cooling system. And concerns  
21 that the Department has with the once-through  
22 cooling system and the potential adverse,  
23 significant adverse effects it may have on San  
24 Francisco Bay.

25 We also provided comments to the CEC on

1 the staff's cooling system analysis, and concurred  
2 that if there were a feasible alternative, and  
3 there appears to be that, an upland alternative,  
4 that that would be the preference, the  
5 recommendation that the Department would take, as  
6 opposed to the once-through cooling due to the  
7 impacts to the San Francisco Bay.

8 PRESIDING MEMBER PERNELL: All right,  
9 thank you.

10 All right, now we'll proceed to the  
11 applicant, and again we had five questions and we  
12 asked for your opinion on those. So, would you  
13 begin?

14 MR. CARROLL: Yes, thank you. With  
15 respect to question number one, which was the  
16 legal effect of the BCDC recommendation, applicant  
17 reads the Warren Alquist Act as was summarized in  
18 Commissioner Pernell's opening remarks, that if  
19 the Commission were inclined to overrule the  
20 recommendation or portions of the recommendation  
21 from BCDC it would have to make a finding that the  
22 recommendation was infeasible, or that the  
23 recommendation resulted in environmental impacts  
24 beyond those that would occur with the project as  
25 proposed.

1           So our reading is consistent with the  
2       summary that was in your opening remarks,  
3       Commissioner Pernell.

4           Question number two I believe has been  
5       answered, which was the status of the biological  
6       opinion.

7           PRESIDING MEMBER PERNELL: Right, you  
8       know, we can scratch question number two, because  
9       we have the answer to that one.

10          MR. CARROLL: Question number three, is  
11       it possible to separate the analysis of biological  
12       impacts from the cooling system alternatives.

13          We think that it is possible to do that.  
14       They are obviously closely related, but whether or  
15       not the proposed once-through cooling system has  
16       impacts on the environment and what those impacts  
17       are is really a separate inquiry from whether or  
18       not upland alternatives to once-through cooling  
19       system are feasible.

20          So they're, as I said, obviously two  
21       sides of the same coin, but I think that it is  
22       possible to separate the analysis and handle  
23       biological impacts associated with once-through  
24       separate from the feasibility of upland  
25       alternatives.

1           With respect to the specific topic areas  
2   that are affected by the choice of the cooling  
3   system, I believe that those are aquatic  
4   biological, land use, noise, visual resources,  
5   water and soils and depending on what upland  
6   alternative you're talking about, air quality.

7           Air quality is not necessarily  
8   implicated, for example, with the air cooled  
9   condenser, but it would be with the other upland  
10  alternatives.

11          With respect to our preference and  
12  rationale for the option, our preference would be  
13  to dive right into it, and to get to the issue of  
14  the cooling system alternatives, the concerns that  
15  have been expressed about biological impacts from  
16  the once-through cooling.

17          Everyone is in concurrence, it seems,  
18  that that's the heart of the matter and we don't  
19  see any reason to delay. And, in fact, we're most  
20  anxious to finally get to evidentiary hearings on  
21  those topics.

22          I would also add that we appreciate the  
23  questions that were posed to NMFS. I'm not sure  
24  that we get much satisfaction from the answers  
25  that we heard tonight, but we've been asking the



1 same questions ourselves.

2 Because on the one hand we hear that the  
3 process has not even yet begun. That the  
4 biological assessment, which was submitted in  
5 January, adopted in January of this year, that  
6 four months later we finally received a request  
7 for additional information. And in light of that  
8 request for additional information the process  
9 hasn't even begun.

10 At the same time we hear that, indeed,  
11 NMFS has prejudged the project, notwithstanding  
12 their statements to the contrary. It's quite  
13 obvious that they've formed a conclusion about the  
14 project, which is wholly inappropriate, completely  
15 inconsistent with the process they're supposed to  
16 follow.

17 And those are issues that we are working  
18 out with NMFS to try to understand how they plan  
19 to implement their review of this project, because  
20 to date we find it to be completely inconsistent  
21 with the process that's laid out in the Act.

22 PRESIDING MEMBER PERNELL: Okay, thank  
23 you. Questions?

24 HEARING OFFICER VALKOSKY: Mr. Carroll,  
25 regarding the first question. In your opinion,

1       then, the BCDC report has a special status,  
2       something that could not be overridden under our  
3       general override provision? Is that a fair  
4       summary?

5               MR. CARROLL: I think it could be  
6       overridden under your general override provisions,  
7       but I do think that you need to make a specific  
8       finding to override BCDC.

9               HEARING OFFICER VALKOSKY: Okay, fine.  
10      And next, I take it you are endorsing what we've  
11      referred to tonight as option four, then?

12              MR. CARROLL: Yes, sir.

13              HEARING OFFICER VALKOSKY: Go right to  
14      those hearings.

15              MR. CARROLL: One caveat that I would  
16      add to that is that I think you're aware, the  
17      Morro Bay project is on a similar timeframe. Our  
18      biological resource experts are the same  
19      biological resource experts on the Morro Bay  
20      project.

21              So, I would not want to have biological  
22      resource hearings going on in those two projects  
23      at the same time.

24              HEARING OFFICER VALKOSKY: Okay, we'll  
25      get to that as the second part of our discussions.

1           Okay, on the final question, on your  
2           choice of topics you listed six. Is it possible,  
3           preferable or just not desirable at all to further  
4           limit those topics as I understand it, the hybrid  
5           and the dry cooling option certainly have impacts  
6           on land use, noise, visual, water and soils.

7           What Commissioner Pernell, I believe,  
8           was proposing earlier though, was a much more  
9           discrete inquiry as to the nature and the severity  
10          of biological impacts and the existence of  
11          alternative cooling technologies.

12          Not necessarily an evaluation of which  
13          would be preferable hypothetically between hybrid  
14          and dry, but really just making those decisions  
15          over the severity of the impacts. And whether, in  
16          fact, there was a feasible alternative to your  
17          proposed once-through.

18          Now, how do you feel about that more  
19          discrete inquiry? Because I think that would take  
20          some of your topics off the table.

21          MR. CARROLL: Let me make sure I  
22          understand the suggestion. How would we feel  
23          about proceeding conditionally with a very focused  
24          inquiry into the potential for the once-through  
25          cooling system to have biological impacts --

1 HEARING OFFICER VALKOSKY: And the  
2 severity of those impacts --

3 MR. CARROLL: -- and the feasibility of  
4 the upland alternatives.

5 HEARING OFFICER VALKOSKY: Yes, the --

6 MR. CARROLL: I think that would make  
7 sense. I don't think it's necessary to get into  
8 all of these issues as part of that discrete  
9 inquiry.

10 HEARING OFFICER VALKOSKY: Right. And  
11 given the more defined inquiry, which topics do  
12 you view as germane?

13 And the way I've defined it I would  
14 assume aquatic biology, and in the FSA the cooling  
15 option study is fundamentally an appendix to that.  
16 So is that the only thing we're talking about then  
17 in your view?

18 MR. CARROLL: Certainly aquatic biology.  
19 I think potentially, and some of the other  
20 intervenors may have a stronger feeling about this  
21 than I do, but I think potentially also noise and  
22 visual resources are areas that would have to be  
23 looked at. There's been concern expressed about  
24 the impacts in those areas associated with some of  
25 the alternatives.

1 HEARING OFFICER VALKOSKY: Okay, but,  
2 again, remember, as I defined it, it was the  
3 existence of a feasible alternative or  
4 alternatives, not necessarily a choice between.

5 MR. CARROLL: Or the impacts associated  
6 with that?

7 HEARING OFFICER VALKOSKY: Well, I think  
8 that could be viewed as another inquiry. You  
9 know, we've got to see, first of all, logically if  
10 there are significant impacts. And then if  
11 feasible alternatives exist.

12 Now, we don't necessarily have to choose  
13 between any feasible alternatives. It's their  
14 existence, right?

15 MR. CARROLL: Right.

16 HEARING OFFICER VALKOSKY: So that's  
17 what I'm saying, you know. Okay, now would noise  
18 and visual still be germane or not? I'd just like  
19 all the parties to give this some thought.

20 MR. CARROLL: Yeah, I think they are. I  
21 understand what you're saying. I think you could  
22 limit it to purely technical analysis of the  
23 upland alternatives; and whether or not, from a  
24 technical matter, an upland alternative is  
25 feasible.

1           However, it very quickly spills over  
2       into issues like noise and visual resources,  
3       because it it's technically feasible, but it  
4       results in an impact at the fenceline that exceeds  
5       the City's noise ordinance, then it's sort of  
6       irrelevant that it's technically feasible, because  
7       it can't be constructed.

8           So, I think it's possible to bifurcate  
9       those and say we're going to have a discussion  
10      just of the technical feasibility, setting aside  
11      for the moment what the environmental impacts  
12      might be. You can bifurcate those, but I think  
13      ultimately you need to look at both.

14           HEARING OFFICER VALKOSKY: Okay, and  
15      that's fair. You know, I appreciate your thinking  
16      on that. So your smallest group would essentially  
17      be aquatic biology/cooling options, noise and  
18      visual, is that correct?

19           MR. CARROLL: Yes.

20           HEARING OFFICER VALKOSKY: Okay, thank  
21      you very much, sir.

22           PRESIDING MEMBER PERNELL: Thank you.  
23      Can we hear from staff.

24           MR. RATLIFF: Dick Ratliff for staff. I  
25      think I'll answer the most important question

1 first. That has to do with which issues you take  
2 up in this proceeding. We think you should choose  
3 option four.

4 And take testimony on the impacts to  
5 aquatic biological and on the alternatives cooling  
6 study and those alternatives that have been  
7 offered for once-through cooling.

8 We think those issues need to be  
9 considered together because we think you have to  
10 make specific findings on both issues before you  
11 really can license this project as it's been  
12 proposed.

13 We note that the prehearing conference  
14 statements from the other parties have indicated  
15 that there will be a great many witnesses and a  
16 great many issues in the overall proceeding. We  
17 think it would be a very bad use of time for you  
18 to go into all of those issues without resolving  
19 the once-through cooling issue first.

20 Otherwise we're going to spend many many  
21 days in hearings. And it may be that this project  
22 cannot be licensed because of federal law, because  
23 of state law. And we wish to have that issue  
24 determined first so we don't spend a lot of time  
25 on hearings that could have been resolved with a

1 much more discrete inquiry.

2 We think there are a number of reasons  
3 why this project cannot be licensed as proposed.  
4 One of them is that staff feels there is a  
5 significant impact to marine biology, as our  
6 testimony indicates.

7 But I think you've heard tonight from  
8 the National Marine Fisheries Service that there  
9 is also the issue of the biological opinion. I  
10 don't believe the NMFS mentioned that the most  
11 recent letter that they have filed in this  
12 proceeding is on a totally different statute, and  
13 that is the Magnuson Stevens Fishery Conservation  
14 Management Act.

15 And that that statute was the basis for  
16 the recommendation denying this project. So there  
17 is basically a two-pronged set of federal  
18 requirements that we think that this project will  
19 have to satisfy and that NMFS will have to  
20 address.

21 We also note that even if the Commission  
22 were to disagree with the staff that there is a  
23 significant impact to aquatic biology, it would  
24 still have to contend with the findings that would  
25 be required under the McAteer Petris Act, the



1 findings that the BCDC's finding would require.

2 And I think, as you've discussed, that  
3 would be a finding that there is either a higher  
4 impact from alternatives, or that the alternatives  
5 are infeasible.

6 For that reason we think that's a rather  
7 high standard for you to meet; and we think it's  
8 even more -- it's a higher override. It's more  
9 than just a typical override finding.

10 We think you have to make very specific  
11 findings supported by substantial evidence in that  
12 regard.

13 So it's our belief that the BCDC and  
14 Coastal Commission kinds of findings have a  
15 certain quality that is beyond that normally  
16 required for findings of an override.

17 In terms of the issues that we think cut  
18 across the alternatives in biological, aquatic  
19 biology issues, my project manager gave me a list  
20 of nine topics.

21 Those are project description; soils and  
22 water; aquatic biology; waste; noise; visual; land  
23 use; air quality and public health.

24 I think to some degree each of those  
25 issues is implicated by the aquatic biological and

1 alternatives adjudication that I believe that  
2 those issues need not be fully adjudicated to get  
3 to the bottom of the issue regarding the  
4 feasibility of alternatives and the impacts to  
5 aquatic biological.

6 So our view is that you should go  
7 forward on those issues first and get a  
8 determination on those, and then proceed with the  
9 rest of the case.

10 HEARING OFFICER VALKOSKY: Do you have a  
11 short list of issues?

12 (Laughter.)

13 HEARING OFFICER VALKOSKY: I mean we got  
14 Mr. Carroll to narrow it down to aquatic  
15 biological/cooling options, noise and visual.

16 MR. RATLIFF: Well, I think I agree with  
17 him on that. I think those are the essential  
18 elements of the adjudication you're going to have  
19 to do.

20 I think it seems to us that if you're  
21 looking at alternatives you're probably going to  
22 want to look at any associated impacts of those  
23 alternatives to determine their feasibility. And  
24 the ones that are most obvious are the ones having  
25 to do with noise and with visual impacts.

1           And so, yes, I think we're pretty much  
2           in agreement on that.

3           HEARING OFFICER VALKOSKY: Okay, I take  
4           it project description was just in there, and the  
5           reason I can figure is to establish the applicant  
6           is proposing once-through cooling. I mean I would  
7           suggest if we go this route that would be a matter  
8           of stipulation. Would that be acceptable to  
9           applicant?

10          MR. CARROLL: Yes.

11          HEARING OFFICER VALKOSKY: Yeah. So, I  
12          mean is there anything that I'm missing on that,  
13          other than that?

14          MR. RATLIFF: No.

15          HEARING OFFICER VALKOSKY: Okay.

16          MR. RATLIFF: There is one thing I would  
17          like to add finally, though, and that is -- and  
18          I'm reluctant to bring it up because I know it's,  
19          to some degree, unanswerable, but it's something  
20          that's very much on staff's mind, anyway.

21          And that is if you read the prehearing  
22          conference statement from the City of San  
23          Francisco, they very pointedly indicate that this  
24          is a project that with -- well, first of all, that  
25          they question whether or not once-through cooling

1       should be appropriate for this project, first of  
2       all.

3               And then second of all, they make the  
4       point that easements are required for once-through  
5       cooling to be utilized. It is not apparent to us,  
6       as a staff, as to how that would be done without  
7       the consent of the City. So we have what is  
8       essentially a classic, to our mind, site control  
9       issue.

10              And from the staff's point of view it  
11       would be unfortunate to go through a proceeding  
12       with the kinds of resources that are required here  
13       simply to have another project that couldn't be  
14       built in San Francisco because the City did not  
15       choose to approve the land use entitlements that  
16       were necessary.

17              Here the Port Authority has to, as we  
18       understand it, grant the easements for once-  
19       through cooling. And that would have to be done,  
20       as we understand it, only after the approval of  
21       the board of supervisors.

22              We're unaware how that is to happen if  
23       the City is, in fact, opposed to once-through  
24       cooling, which is what is indicated in their  
25       prehearing conference statement.

1           So, again, I don't -- it's not that I  
2           want to raise an unanswerable issue, but I think  
3           it's an issue that needs to be addressed before we  
4           embark on months of hearings.

5           HEARING OFFICER VALKOSKY: That's a good  
6           point, Mr. Ratliff. Mr. Carroll, do you have any  
7           response to the site control issue? And I guess  
8           I'll throw in 25526(b), I believe, of the Warren  
9           Alquist Act, which again it leads to one reading.  
10          Requires applicant to obtain site control or  
11          permission to use property that's owned by a  
12          public agency before the Energy Commission can  
13          certify a plant.

14          MR. CARROLL: We agree that a portion of  
15          the site control relates to the license agreements  
16          for the intake and the outfall. And that if the  
17          project were to move forward ultimately license  
18          agreements would have to be obtained from the  
19          City.

20          However, we think that it's wholly  
21          inappropriate for that issue to color the  
22          Committee's review of the proposed once-through  
23          cooling system. Whether or not the proposed once-  
24          through cooling system has any significant  
25          biological impacts is completely unrelated to the

1 issue of whether or not we're ultimately going to  
2 be able to negotiate the license agreements with  
3 the City of San Francisco.

4 And we're troubled, frankly, by the fact  
5 that in our view the biological impacts, or  
6 supposed biological impacts associated with the  
7 once-through cooling system are being used as a  
8 means of driving the project in a direction that  
9 doesn't result in a situation where you've  
10 licensed another project that can't be built in  
11 the City of San Francisco because the City won't  
12 grant the real estate agreements.

13 And we've been troubled about the  
14 melding of those two issues since the beginning.  
15 Whether or not there are biological impacts  
16 associated with the once-through cooling system  
17 has absolutely nothing to do with whether or not  
18 we can get the right to build the system from the  
19 City.

20 PRESIDING MEMBER PERNELL: What we're  
21 looking at here, Mr. Carroll, is this is a staff  
22 resource issue for us. And the Committee will  
23 hear all of the issues, but it is prudent to get  
24 the central issues out on the table.

25 So, we're not trying to leverage

1 anything, but there is a resource issue for me and  
2 for our -- for my staff, and for the Commission  
3 Staff.

4 So it is not trying to -- this direction  
5 that the Committee is going in, trying to get the  
6 main issue on the table, is not trying to taint  
7 anyone's opinion. Rather, we're trying to get the  
8 facts out as the applicant, staff and intervenors  
9 see them. Up front. The major concerns.

10 It is an applicant's right to have all  
11 of the issues heard if you so choose to. But,  
12 again, for this Committee, it is a resource issue.  
13 And we're trying not to waste anybody's time as we  
14 go forward.

15 So, you know, I don't want you to  
16 misconstrue what we're trying to do here, because  
17 we're not trying to prejudge anything. We don't  
18 do that. We're simply neutral. But the faster we  
19 get the facts out on the table, the central issue,  
20 I think the more productive we can be as a  
21 Committee, and that's what I'm trying to do here.

22 HEARING OFFICER VALKOSKY: Okay, Mr.  
23 Ratliff, so then your short list is basically  
24 aquatic biology/cooling options, treating them as  
25 one issue, noise and visual, is that correct?

1           MR. RATLIFF: That's right. I think  
2           that there are some additional issues that relate  
3           to air quality that will have to be addressed in  
4           terms of the mitigation that may be required for  
5           either dry cooling or for a reclaimed water  
6           system.

7           But I think those are fairly discrete  
8           issues that we can address in a much more narrow  
9           way than by opening up those entire issues, the  
10          emissions from the power plant in its entirety.

11          HEARING OFFICER VALKOSKY: So that would  
12          essentially be characterized as just the  
13          sufficiency of air quality mitigation for  
14          alternative cooling technologies, something like  
15          that?

16          MR. RATLIFF: Yes. Necessity and the  
17          kinds of mitigation that would be required.

18          HEARING OFFICER VALKOSKY: Okay, thank  
19          you.

20          PRESIDING MEMBER PERNELL: Okay, City of  
21          San Francisco.

22          MS. MINOR: Are there specific questions  
23          that you'd like me to start with, or shall I just  
24          go down the list?

25          PRESIDING MEMBER PERNELL: Well, -- I



1 got to put my glasses on, --

2 MS. MINOR: Sorry about that.

3 (Laughter.)

4 PRESIDING MEMBER PERNELL: One of the  
5 first ones we were interested in your opinion of  
6 the four different options.

7 MS. MINOR: Certainly. If you'd like me  
8 to go down the list, we --

9 PRESIDING MEMBER PERNELL: Yes, just go  
10 right down the list.

11 MS. MINOR: -- we will certainly do  
12 that. Initially looking at the four options that  
13 you presented, Commissioner Pernell, in terms of  
14 how to proceed, the City strongly believes that  
15 hearings should not commence until the biological  
16 opinion has been issued.

17 The reason we believe that is that  
18 considerable public resources have already been  
19 devoted to this matter, specifically the cooling  
20 options issue. And a number of federal and state  
21 agencies that have already looked at this issue,  
22 and you've heard from them tonight, have cited  
23 both state law and federal law to suggest that  
24 cooling option once-through cooling has  
25 detrimental impacts to the Bay that cannot be

1 adequately mitigated.

2 The statutes that you've heard from  
3 tonight, the section 7 opinion which is pending;  
4 the biological opinion; the Magnuson Stevens Act  
5 that the NMFS representative talked about today;  
6 McAteer Petris Act from BCDC where they have  
7 concluded that there's a feasible alternative.

8 As you also know, still pending is the  
9 National Discharge Permit, which is section 316 of  
10 the Clean Water Act that still has to be issued.  
11 And very importantly, the question of whether the  
12 City and County of San Francisco will enter into a  
13 license or easement that is essential for the  
14 project as it is proposed by Mirant.

15 Now, we think that the biological  
16 opinion will definitely inform your opinion and  
17 the City's opinion about the feasibility of this  
18 project proceeding as it is proposed by Mirant.

19 The City is looking very carefully at  
20 the cooling options. In the many documents that  
21 we have prepared we have said that the City  
22 continues to have significant questions and  
23 concerns about the once-through cooling system  
24 that has been proposed by Mirant. But, in fact,  
25 we continue to do due diligence, looking at the

1 technical and feasible questions associated with  
2 the two other alternatives, one of which has been  
3 proposed by the staff.

4 For an example, with hybrid cooling.  
5 From a public health standpoint we are concerned  
6 about the additional PM10 that would be generated  
7 as a result of the use of hybrid cooling. And  
8 without a further understanding as to how that  
9 additional PM10 would be mitigated, the City has a  
10 number of questions and concerns about hybrid  
11 cooling as an alternative.

12 In terms of dry cooling, we --

13 PRESIDING MEMBER PERNELL: Okay, let me  
14 stop you there, because I don't want to get into  
15 litigating the issues and I --

16 MS. MINOR: Okay.

17 PRESIDING MEMBER PERNELL: -- I realize  
18 that there are a number of agencies that oppose  
19 once-through cooling, but it appears that the  
20 applicant has said they have a difference of  
21 opinion. And so I don't want to get into --

22 MS. MINOR: That's correct,  
23 Commissioner. Actually the point I'm trying to  
24 make is just to emphasize again that the City has  
25 not, as of yet, definitively said we oppose once-

1 through cooling.

2 In fact, we continue to look at the  
3 options because we are continuing to study both  
4 the technical and feasible issues associated with  
5 both of the options.

6 Having said that, the City, as an  
7 intervenor, our residents and constituents have  
8 all been privy to a number of documents that have  
9 been generated by federal and state agencies  
10 suggesting that there are significant impacts from  
11 the proposed once-through cooling system.

12 And because of that it is going to be  
13 difficult for the City, as a public entity, to  
14 proceed to enter into a license agreement with  
15 Mirant, which they will require for the once-  
16 through cooling system, until there has been a  
17 definitive conclusion from the federal agency  
18 regarding the biological opinion.

19 And for that reason we strongly believe  
20 that we should await the biological opinion before  
21 we proceed to hearings, that it would be a further  
22 waste of resources to have hearings in this matter  
23 if, in fact, a biological opinion could be  
24 definitive in terms of the federal agency's  
25 position on whether once-through cooling is a

1       permissible cooling option for this power plant.

2               HEARING OFFICER VALKOSKY: But isn't it  
3       also true that that is the only thing that the  
4       federal opinion would be determinative of? In  
5       other words, theoretically the federal opinion  
6       could say no once-through cooling.

7               As I understand it, it would not  
8       necessarily say dry or hybrid, is that correct?

9               MS. MINOR: It's my understanding that  
10      the purpose of a biological opinion is to assess  
11      the biological impacts of the proposed once-  
12      through cooling.

13              HEARING OFFICER VALKOSKY: Right, yes.  
14      So given that, all that the federal authorities  
15      could say is that there would be too significant,  
16      excessively significant impacts by once-through  
17      cooling, and that once-through cooling could not  
18      be used.

19              Now, that begs the question of the  
20      alternatives, which would be dry or hybrid  
21      cooling. It is my understanding that if either of  
22      those options were found feasible, that the  
23      federal authorities essentially have no role and  
24      would not be issuing a further biological opinion.  
25      Is that your understanding?

1 MS. MINOR: I think that's correct. I  
2 guess the but is that the applicant has been clear  
3 up until this time that the only project that's on  
4 the table is the project that they have proposed,  
5 which is once-through cooling.

6 HEARING OFFICER VALKOSKY: We understand  
7 that, and what the Committee is proposing is to go  
8 to that central issue; the Committee will come out  
9 with a discrete ruling, decision, order, whatever  
10 you want to call it, indicating its view of the  
11 evidence.

12 And that would be essentially that once-  
13 through cooling is permissible, or once-through  
14 cooling is not permissible and that an alternative  
15 must be chosen by applicant.

16 So, I fail to see how this impacts the  
17 City's desire to further study things.

18 MS. MINOR: Well, if the Commission were  
19 to determine that once-through cooling is  
20 permissible and that decision were to be reached  
21 prior to the biological opinion being issued, and  
22 then a biological opinion is issued that indicates  
23 there are, in fact, significant impacts --

24 HEARING OFFICER VALKOSKY: Yeah, but I  
25 mean I --

1 MS. MINOR: -- it appears that there's  
2 been just a huge waste of public resources on  
3 those hearings.

4 HEARING OFFICER VALKOSKY: Well,  
5 certainly the federal authorities --

6 MS. MINOR: That's the point we're  
7 making.

8 HEARING OFFICER VALKOSKY: -- have the  
9 potential to trump the Commission if that was the  
10 Commission's decision.

11 PRESIDING MEMBER PERNELL: I mean to  
12 answer one of your questions, in terms of not  
13 having hearings at all until that opinion is  
14 reached, we've been in this process now some time.  
15 And my understanding is, although we didn't get a  
16 definite date, but I don't think it's going to be  
17 two or three months before that opinion comes out.

18 So, surely, it could be incorporated  
19 into the hearing process. I think we've had this  
20 application on file a long time, and I'm ready to  
21 proceed, whichever way it goes.

22 I want to be able to proceed, get the  
23 evidence out, do my Presiding Member's Proposed  
24 Decision, get it to the Commission and let them  
25 vote it up or down.

1           But, at any rate, we got to get on with  
2     the process.

3           MS. MINOR: And, Commissioner Pernell,  
4     we certainly appreciate what you're saying. This  
5     application certainly has been pending for a very  
6     long time, and public resources have been used and  
7     continue to be used.

8           But as the attorney representing another  
9     public entity, the City is concerned about the  
10    amount of resources and the amount of time that  
11    will have to be allocated to hearings when there  
12    is a strong possibility that a federal agency is  
13    going to issue an opinion that says that this,  
14    from an Endangered Species Act standpoint, that  
15    this proposal has significant impacts.

16          PRESIDING MEMBER PERNELL: I understand  
17    your concern.

18          MR. CARROLL: May I interject just one  
19    statement about the standard against which NMFS  
20    will be evaluating the project because the  
21    discussion that we're having here assumes that the  
22    standard is significant impacts, and that if NMFS  
23    were to find a significant impact that it could  
24    preclude the project from going forward with once-  
25    through.



1           That is not the standard that NMFS would  
2       have to meet to prevent the project from going  
3       forward. The standard they would have to meet to  
4       prevent the project from going forward as proposed  
5       is if the project would jeopardize the continued  
6       existence of a listed species.

7           That is a very high standard. So the  
8       notion that NMFS just finds significant impacts  
9       and the project can't go forward is completely  
10      incorrect. They need to find that it jeopardizes  
11      the continued existence of a species.

12           PRESIDING MEMBER PERNELL: And I'm sure  
13      you have that in your brief.

14           MR. CARROLL: We will.

15           MS. MINOR: May I proceed, please?

16           PRESIDING MEMBER PERNELL: Yes.

17           MS. MINOR: Thank you. Addressing the  
18      other issues that have been raised --

19           PRESIDING MEMBER PERNELL: Can I ask you  
20      about the option, though, --

21           MS. MINOR: Yes.

22           PRESIDING MEMBER PERNELL: -- which is  
23      one of the key ones, and those options are to  
24      proceed with all the topics; do not -- oh, well, I  
25      guess maybe you got option two, which is do not

1 proceed until you get the biological opinion?

2 MS. MINOR: But if it's -- since we have  
3 addressed that, if I could go on and address those  
4 other questions that you have raised with the  
5 other parties in terms of which topics we believe  
6 are related to or affected by the cooling options.

7 PRESIDING MEMBER PERNELL: Right. But,  
8 before we do that are you suggesting option two,  
9 which is do not proceed pending a final biological  
10 opinion?

11 MS. MINOR: That is our first choice,  
12 yes.

13 PRESIDING MEMBER PERNELL: Okay. And  
14 now you can proceed.

15 MS. MINOR: Okay. On the question of if  
16 you were to proceed, which topics are interrelated  
17 with the cooling system such that in addition to  
18 looking at biology aquatic, you'd have to look at  
19 other topics, what are those topics.

20 In the City's prehearing conference  
21 statement we also included land use, noise, visual  
22 resources, air quality and potentially  
23 reliability.

24 As Dick Ratliff has indicated, air  
25 quality can probably be separated out. We do

1 think that that issue, however, is important in  
2 view of our concerns about potential PM10,  
3 additional PM10 that would have to be mitigated.

4 And on the question of reliability as a  
5 topic, that's not specifically addressed in our  
6 prehearing conference statement, but Mirant has  
7 raised with the City the possibility that hybrid  
8 cooling as an option has significant impacts on  
9 reliability of the system.

10 And so, if, in fact, that's the case,  
11 that's also a topic that we'd want to have covered  
12 as we look at cooling options in those  
13 interrelated topics.

14 PRESIDING MEMBER PERNELL: Okay, --

15 HEARING OFFICER VALKOSKY: I've asked  
16 everybody else for a short list. Do you have a  
17 short list, Ms. Miner?

18 MS. MINOR: The short list would be  
19 aquatic biological, noise, visual and your water  
20 and soil section in the FSA frequently refers to  
21 the aquatic biology section, so we'd want to make  
22 sure that those relevant sections are also  
23 included in aquatic biology.

24 HEARING OFFICER VALKOSKY: Okay. And  
25 then I take it you agreed with Mr. Ratliff's

1 statement a limited inquiry into air quality,  
2 dealing essentially with the necessity and  
3 sufficiency of mitigation for additional PM10  
4 offsets?

5 MS. MINOR: Yes.

6 HEARING OFFICER VALKOSKY: Okay.

7 PRESIDING MEMBER PERNELL: All right.

8 Did you have anything else on that?

9 MS. MINOR: No, unless there are more  
10 questions that you'd like me to address.

11 PRESIDING MEMBER PERNELL: Great, thank  
12 you.

13 MS. MINOR: Thank you.

14 PRESIDING MEMBER PERNELL: CBE.

15 MS. SIMON: Thank you. CBE also  
16 strongly prefers option two, to wait for the final  
17 biological opinion prepared by the National Marine  
18 Fisheries Service and submitted to the United  
19 States Environmental Protection Agency.

20 In addition to the reasons cited by the  
21 City related to concern about the use of public  
22 resources, which I would point out means the tax  
23 dollars of CBE members and other residents of the  
24 area, in addition to the sort of general concern  
25 about the time of City Staff, CBE has two

1 additional reasons why we believe that really the  
2 only sound thing for the Committee to do is wait  
3 for the final biological opinion.

4 As we mentioned in our prehearing  
5 conference statement the Committee is responsible,  
6 under the California Environmental Quality Act,  
7 the Commission is responsible for a thorough  
8 analysis of the environmental impacts of the  
9 proposed project.

10 The thorough analysis of the biological  
11 impacts to the Bay of the once-through cooling  
12 system is going to be made by the National Marine  
13 Fisheries Service in the biological opinion.

14 PRESIDING MEMBER PERNELL: Are you  
15 suggesting they're the only ones can do a thorough  
16 analysis?

17 MS. SIMON: I'm suggesting that they are  
18 entrusted by federal law with the responsibility  
19 to do that analysis, and that the Commission is  
20 not able to substitute its own version of analysis  
21 for the analysis of the National Marine Fisheries  
22 Service.

23 The Commission must consider and, from a  
24 CEQA point of view, incorporate the information  
25 produced in the biological opinion. That the

1 Commission is not legally free to go off on its  
2 own independent of the federal findings.

3 PRESIDING MEMBER PERNELL: I don't think  
4 that we've ever suggested that.

5 MS. SIMON: But it does seem to me, with  
6 all respect, Commissioner Pernell, that the  
7 proposal number four would have that effect unless  
8 the Committee said, but we're not going to finish  
9 number four until the biological opinion is  
10 available, which seems to me to boil down to being  
11 number two.

12 So we might as well just  
13 straightforwardly say we need the biological  
14 opinion in order to resolve the question of the  
15 aquatic biological impacts of the project as  
16 proposed with the once-through cooling system.

17 Otherwise, we run the risk, which the  
18 counsel for the City has identified, and I don't  
19 want to belabor, of wasting resources.

20 The second point I would like to make,  
21 however, which was not made particularly  
22 explicitly in our prehearing conference statement  
23 is that were the Committee not to wait for the  
24 biological opinion it would be putting members of  
25 the public at a significant disadvantage in their

1 ability to participate meaningfully in this  
2 proceeding.

3 I think we can all agree that the work  
4 in the biological opinion, whatever our views  
5 about its legal status, will be significant expert  
6 opinion about the impacts of this project as  
7 proposed.

8 Members of the public are entitled to  
9 have that information when they are testifying in  
10 this proceeding; when they are commenting to the  
11 Committee during public comment periods; when they  
12 are exercising their rights to talk to their  
13 representatives in City government.

14 If the Committee proceeds in a way that  
15 that information is not available to members of  
16 the public who cannot go out and hire their own  
17 experts to give them advice about the biological  
18 impacts of the project as proposed, the Committee  
19 is, in effect, creating a barrier to the  
20 participation of concerned residents in this  
21 proceeding by asking them to participate before  
22 they have available information that is being  
23 generated by a government agency charged with the  
24 responsibility of generating that information.

25 That doesn't seem fair. And it also,

1 from CBE's point of view, doesn't seem necessary.  
2 All of this can be solved by waiting. And we  
3 certainly want to acknowledge the Committee's  
4 concern, which you have expressed, that this  
5 application has been pending for a long time. But  
6 that, in itself, doesn't seem to be a good reason  
7 to proceed in what appears to us to be haste with  
8 respect to this problem.

9 And I think I do also need to point out  
10 that some of the delay here appears to be because  
11 the applicant hasn't provided information to the  
12 relevant government agencies that they need. And  
13 it does not seem fair that the rest of us should  
14 pay for the difficulties the applicant has had in  
15 providing information, with having to go through  
16 option four, and committing all the resources and  
17 having members of the public in this awkward  
18 position because the show hasn't gotten on the  
19 road because of issues with the sufficiency of the  
20 information provided by the applicant.

21 PRESIDING MEMBER PERNELL: Okay, I  
22 understand your point.

23 MS. SIMON: Thank you. As to the other  
24 questions of looking at the way we did this in our  
25 prehearing conference statement isn't quite the



1 same way the Committee has asked for, so we think  
2 that the cooling water system related issues are  
3 obviously aquatic biology, land use, noise, air  
4 quality, public health, visual resources, soil and  
5 water.

6 Alternatives, socioeconomic resources,  
7 to the extent that that is the locus of the  
8 discussion of environmental justice issues in the  
9 final staff assessment, so that's our list.

10 I would also like to point out that even  
11 though it appears that your proposed option three  
12 is not getting a lot of support, that is doing the  
13 non cooling topics first, CBE does want to point  
14 out that there's an additional problem with that  
15 proposal, aside from lack of popularity.

16 Which is that in the local system  
17 effects section of the final staff assessment the  
18 staff identified its concerns about potential  
19 common failure modes in local project -- common  
20 failure mode in the project as designed, and  
21 indicated the potential that it would seek to  
22 discuss redesign with the applicant, so that  
23 proceeding with all other topics first has a big  
24 uncertainty there, too, which is unresolved,  
25 related to the staff's local systems effects

1 position.

2 So, for that reason, also, it would seem  
3 to me that trying to get started by doing the  
4 everything-but option number three, has an  
5 analogous problem to option four. And should be  
6 rejected.

7 PRESIDING MEMBER PERNELL: Okay.

8 HEARING OFFICER VALKOSKY: Do you have a  
9 short list of topics, Ms. Simon?

10 MS. SIMON: I don't wish to be  
11 disagreeable, but not very much shorter. I think  
12 that -- or maybe it is that I didn't -- I'm not  
13 entirely clear on the Committee's proposal.

14 If the inquiry would be the biological  
15 impacts of once-through cooling and the  
16 feasibility of upland alternatives, where  
17 feasibility means can it be built, not should it  
18 be built, in some configuration --

19 HEARING OFFICER VALKOSKY: Right, no, I  
20 think that's correct, can it --

21 MS. SIMON: Is that what the Committee  
22 would --

23 HEARING OFFICER VALKOSKY: -- can it  
24 feasibly be built, not should you build one or the  
25 other.

1 MS. SIMON: Without regard for the  
2 consequences, then I think it's possible to have a  
3 pretty short list, which would probably be aquatic  
4 biology, land use, noise, visual resources and air  
5 quality.

6 HEARING OFFICER VALKOSKY: Okay, limited  
7 air quality, as we've been talking about basically  
8 the --

9 MS. SIMON: Well, no, I think that if  
10 the question is can it be built, then mitigations  
11 don't come into it. I think that we would  
12 disagree that that's the right air quality limit.

13 I think that because if one were to say  
14 well, what are the appropriate mitigations, then  
15 that's beyond the scope of can it physically be  
16 built.

17 And I think CBE would actually have some  
18 difficulty trying to limit, in trying to limit the  
19 air quality and public health discussion to  
20 mitigation for the incremental air emissions from  
21 a hybrid cooling system without looking at the  
22 project as a whole.

23 So, I think then our answer is that no,  
24 no, that doesn't make the short list for us.

25 HEARING OFFICER VALKOSKY: Okay. And

1       why would land use be in there?

2               MS. SIMON: I think land use would be  
3       in -- I may not be remembering how the final staff  
4       assessment divided it up correctly, but there are  
5       two reasons. One is that the public access and  
6       mitigations things from the BCDC report are in  
7       land use, and they are linked to what project is  
8       being built.

9               And the other is I may just not remember  
10       how the other impacts, potential impacts of the  
11       alternatives were identified. But I do think that  
12       alternatives needs to be on the short list because  
13       we're talking about alternatives to the project,  
14       as proposed. Formally --

15              HEARING OFFICER VALKOSKY: Well, yeah, I  
16       mean that's one of the problems with our analytic  
17       process, I think. There is a lot of overlap.  
18       But, you know, I mean there are -- sure, that's a  
19       logical connection, but some of the alternatives  
20       we're talking about which were discussed in the  
21       FSA we clearly wouldn't be talking about. So --

22              MS. SIMON: So on alternatives we might  
23       be prepared to say that there's a slice of  
24       alternatives for the option four version, whereas  
25       we are not willing to say that as to air quality.

1 HEARING OFFICER VALKOSKY: Okay, well,  
2 thank you for that clarification.

3 And just real quickly I'd like applicant  
4 and staff to give brief responses to --

5 PRESIDING MEMBER PERNELL: Well, wait a  
6 minute. Before we do that I understand we have a  
7 Supervisor in the audience, Supervisor Maxwell.  
8 Would you come to the mike and identify yourself,  
9 and if you'd like to make a statement, please do  
10 so.

11 SUPERVISOR MAXWELL: Yes, very briefly.  
12 Can you hear me okay? My name is Sophie Maxwell.  
13 I'm a member of the Board of Supervisors of San  
14 Francisco.

15 And the power plant that's in question,  
16 or we're talking about here, is one that's in my  
17 district, not only is it in our City.

18 And I would like to first of all thank  
19 you very much for allowing me to speak tonight,  
20 and for being here, and for all of your  
21 commitment. This is a good process.

22 And I'd like us to remember that the  
23 power plant is going to be here a lot longer than  
24 our process. So even though the process seems  
25 very long, the power plant should be here, if it

1 happens, will be here at least 50 years or so. I  
2 mean that's as long as the other ones have been  
3 here.

4 So I think a couple more months, or  
5 whatever, that may be necessary for us to have as  
6 much information and so as we go forward we know  
7 that we've done every single thing that we  
8 possibly could have done to make sure that we have  
9 information.

10 It is so important when I look at the  
11 responsibility that we all have here for human  
12 lives, for children and babies and families who  
13 are not born yet, that it's a big responsibility  
14 that you all have taken. And I certainly  
15 appreciate it.

16 And so I want us to be thoughtful and  
17 not be hurried, and not be rushed into doing  
18 anything but to take all of the necessary time it  
19 takes to get information.

20 And I want to thank all the people here  
21 who are saying that. And I know when you want to  
22 rush, I mean I just got out of the board of  
23 supervisors and we have to listen and be aware,  
24 but that's what we decided to do.

25 So, again, I want to thank you and thank

1 all the people that are here on behalf of the City  
2 and County of San Francisco, and the citizens of  
3 California.

4 Thank you.

5 (Applause.)

6 PRESIDING MEMBER PERNELL: Well, thank  
7 you, Supervisor Maxwell.

8 And let me just say that this is a  
9 process that can't be rushed because we want the  
10 facts on the table. They will be disputed and  
11 litigated. And it's not going to be rushed.

12 But our process is a long one, in  
13 itself. And this is not anything that will be  
14 decided in the next month or two. I mean we have  
15 a process and a procedure to go through. And  
16 we'll do that.

17 And we certainly are honored to have you  
18 here. And I'm honored to be in San Francisco,  
19 quite frankly, although I haven't ate at one of  
20 your restaurants yet.

21 (Laughter.)

22 PRESIDING MEMBER PERNELL: But I'll get  
23 to that.

24 But thank you for being here and  
25 expressing your concerns and certainly

1 representing your district. Thank you.

2 Ms. Simon, I think we have -- was  
3 that --

4 HEARING OFFICER VALKOSKY: Well,  
5 actually I'd like Mr. Carroll and Mr. Ratliff to  
6 respond to the two additional points that Ms.  
7 Simon raised concerning the restrictions upon the  
8 Commission to go off on its own, I believe she put  
9 it, irrespective of NMFS' findings.

10 And secondly, the point she raised about  
11 disadvantaging the public in going to hearings  
12 before the final biological opinion.

13 MR. CARROLL: With respect to the  
14 question of whether or not the CEC can proceed to  
15 evaluate a project, including biological impacts,  
16 in advance of NMFS, what I would say as a  
17 practical matter is I don't think that this  
18 Commission needs a federal agency to do its job  
19 for it.

20 And this agency is completely capable of  
21 undertaking the evaluation and discharging its  
22 obligations under CEQA and the Warren Alquist Act.

23 As a legal matter, I'm certainly not  
24 aware of any restriction placed on the Energy  
25 Commission from discharging its obligations under



1 the Warren Alquist Act of CEQA without a green  
2 light from a federal agency.

3 So, as both a practical matter and a  
4 legal matter, I don't find any validity in the  
5 notion that this Commission can't proceed to  
6 evaluate the project that's in front of them.

7 With respect to the ability of the  
8 public to participate, the public will have plenty  
9 of opportunity to participate. They, in essence,  
10 have two bites at the apple.

11 They can participate in the process in  
12 front of the California Energy Commission, as you  
13 evaluate the biological impacts associated with  
14 the project. And they can participate in the  
15 federal process as the federal agencies evaluate  
16 the biological impacts of the project.

17 So, I don't see the public is  
18 disadvantaged in any way. In fact, as I just  
19 said, in some respects they have two bites at the  
20 apple instead of one.

21 HEARING OFFICER VALKOSKY: Thank you,  
22 Mr. Carroll. Mr. Ratliff.

23 MR. RATLIFF: First of all, it was not  
24 staff's thought to go off without including NMFS  
25 in the process. We've been in communication with

1 NMFS for some time and it was certainly our desire  
2 and our expectation that they would participate in  
3 the hearings, as would Fish and Game regarding  
4 impacts on listed species.

5 And, granted, there would not be a  
6 biological opinion at that time, but we would get  
7 the opinions from the agencies' staffs, at least,  
8 on those issues.

9 Now, certainly it seems, I think,  
10 reasonable, the City's position and CBE's position  
11 that you ought to wait until you get the federal  
12 biological opinion, because the federal biological  
13 opinion may say that you can't use once-through  
14 cooling, and that would be the end of the matter,  
15 because there is no -- I mean the federal  
16 government preempts this issue.

17 And for that reason I thought I would  
18 justify why staff chose going ahead with hearings  
19 on the more discrete issue of aquatic biology and  
20 alternatives. And that is that we believe there  
21 are other issues which we've already gone into  
22 tonight which also indicate that frankly once-  
23 through cooling is a non starter.

24 And I think that in a sense waiting for  
25 a biological opinion from NMFS, I don't know how

1 fast NMFS is about giving biological opinions, but  
2 our experience with their sister agency has been  
3 that you might wait a very long time to actually  
4 get the biological opinion.

5 And this applicant has had its  
6 application before the Energy Commission for, I  
7 believe, about two years now. This would probably  
8 lengthen the process considerably.

9 And it's our belief that to go forward  
10 with hearings on the basis of the necessary  
11 findings that you would need to make under CEQA  
12 and the McAteer Petris Act, and the State  
13 Endangered Species Act, that you would have an  
14 entirely valid basis for determining that indeed,  
15 once-through cooling is a non starter. And you  
16 wouldn't have to wait for the biological opinion  
17 to tell you so.

18 That's our view, and that allows us to  
19 get to hearings and get the process going without  
20 waiting another untold number of months until the  
21 feds can give you their opinion. Then if the feds  
22 give you their opinion and the opinion is, for  
23 whatever reason, whether it's a political opinion  
24 or whatever the biological opinion is, there is no  
25 jeopardy to endangered species, then where are

1       you? You've wasted all that time and you could  
2       have been going forward on the basis of the state  
3       statutes that you do interpret. And I think you  
4       could have reached the same conclusion much faster  
5       under those statutes.

6               So that's why we prefer going forward  
7       with the alternatives, the limited portion of the  
8       alternatives testimony and aquatic biology  
9       testimony, and getting a conclusion on that now.

10              MR. SMITH: Mr. Ratliff, and this is a  
11       question perhaps for Mr. Carroll, also, the  
12       applicant.

13              The Marine Fisheries Service, National  
14       Marine Fisheries Service has issued this letter  
15       after reviewing the AFC, staff's assessment, the  
16       biological assessment that was prepared by the  
17       applicant, and other related documents.

18              What, in your opinion, what else can be  
19       learned from the biological assessment that the  
20       Marine Fisheries Service will go through?

21              MR. RATLIFF: Well, I think, as Mr.  
22       Carroll stated, they're going to focus on the  
23       impact to listed species. And they will also, as  
24       I understand it, under the Magnuson Stevens  
25       Fishing Conservation Act, they will also be

1 addressing the impact on commercial species.

2 And based on those two determinations  
3 they'll be issuing a determination of whether or  
4 not the project can go forward under federal law.

5 A very important determination,  
6 obviously. We could reach the conclusion that it  
7 can, and then the federal government could reach  
8 the conclusion that you can't, and then that would  
9 be the end of the matter. And we would have  
10 wasted our time doing hearings, I guess, in the  
11 absence of the federal determination.

12 But, I guess staff feels strongly that  
13 you can make that determination in the absence of  
14 the federal law. And that we would be doing the  
15 applicant a favor to reject this proposal and get  
16 on with the rest of the thing without waiting for  
17 the federal government to tell us so.

18 And if I could add and address one  
19 subsidiary issue that's been addressed earlier,  
20 and that is the air quality issue and whether or  
21 not it should be included in part under the  
22 alternatives testimony.

23 It's our belief that air quality  
24 mitigation is something we need to address,  
25 because I think you're going to have to compare

1       when you're determining that there are feasible  
2       alternatives to once-through cooling, you're going  
3       to have to determine that the impacts of such  
4       alternatives are not unacceptable from a public  
5       health and air quality standpoint.

6               And I think therefore you will have to  
7       do at least a preliminary analysis of what those  
8       impacts are, and how they might be mitigated.  
9       It's the staff's belief that they can be  
10      mitigated, and we would want to tell you how.

11             PRESIDING MEMBER PERNELL:   Okay.

12             MR. SMITH:   Mr. Carroll, would you  
13      please respond to the question about what  
14      additional information -- what else can we learn  
15      from a biological assessment that hasn't already  
16      been put in the record?

17             MR. CARROLL:   I think the process of  
18      producing the biological opinion is a -- it's  
19      duplicative of the process that the Energy  
20      Commission Staff and the other state agencies are  
21      going through under the Warren Alquist Act.   So it  
22      is an independent complementary review.

23             And I suppose that it's possible that  
24      the experts at the National Marine Fisheries  
25      Service might reach conclusions that are different

1       than the conclusions reached by the state  
2       agencies. I think that's unlikely. That hasn't  
3       been experience to date, I don't think, and many  
4       projects that have come before the Energy  
5       Commission have been subject to obviously both  
6       review at the Energy Commission and review at the  
7       federal level pursuant to the Endangered Species  
8       Act, and generally the findings are very  
9       consistent.

10               What frequently happens is that the  
11       federal agency will recommend some additional  
12       mitigation measures that weren't included at the  
13       state level, and those get folded in as conditions  
14       of certification after the fact.

15               So, I think probably very little. There  
16       may be some marginal, some additional analysis  
17       that's included, but I would expect it to be very  
18       consistent with the analysis conducted at the  
19       state level.

20               HEARING OFFICER VALKOSKY: But -- I'm  
21       sorry.

22               MR. CARROLL: And, again, I can't  
23       emphasize enough the standard, and I guess I would  
24       ask that if the Committee is truly struggling with  
25       whether or not to defer evaluation of the project

1 pending the issuance of the biological opinion,  
2 because the biological opinion might undo  
3 everything in the sense that the biological  
4 opinion will prevent the project from going  
5 forward, if you're concerned about that I would  
6 ask that you allow us to brief the issue on what  
7 the standard really is.

8           It is possible, probable, given the  
9 statements that they've made to date, that the  
10 federal agency will find that there are impacts  
11 associated with the once-through cooling system,  
12 and require that mitigation be imposed. But  
13 again, that's very different from finding that  
14 this project jeopardizes the continued existence  
15 of a species, and therefore cannot go forward at  
16 all.

17           And I think that's a critical issue,  
18 because the scenarios that have been laid out that  
19 contemplate waiting until the biological opinion  
20 is issued are premised on the notion that you  
21 might approve a project with once-through cooling  
22 that NMFS could very easily pull the rug out from  
23 under you. They cannot do that very easily. The  
24 jeopardy determination is a very high standard.

25           PRESIDING MEMBER PERNELL: Can we go off



1 the record a minute.

2 (Off the record.)

3 PRESIDING MEMBER PERNELL: And I would  
4 ask Mr. Dillon, is he here -- is he still here --  
5 Mr. Dillon, we have one question for you by the  
6 representative from Commissioner Keese's office.  
7 Mike.

8 MR. SMITH: Hello, Mr. Dillon, how are  
9 you?

10 MR. DILLON: Fine.

11 MR. SMITH: Given what has been stated  
12 by the applicant with respect to the standard by  
13 which the National Marine Fisheries Service  
14 renders a biological opinion, that is does a  
15 proposed project jeopardize the existence of a  
16 species. That's, summarizing quickly, that's  
17 essentially the benchmark that Mr. Carroll has  
18 stated.

19 MR. DILLON: A biological --

20 MR. SMITH: I guess I have two  
21 questions.

22 MR. DILLON: Okay.

23 MR. SMITH: Is that correct? And --

24 MR. DILLON: Not exactly.

25 MR. SMITH: -- number -- okay.

1 (Laughter.)

2 MR. DILLON: A biological opinion is  
3 required when there it take of an endangered  
4 species. That is a different standard than  
5 jeopardizing the continued existence of that  
6 listed species.

7 This project, we believe, is highly  
8 likely to result in take of endangered species,  
9 thus we must do a biological opinion to determine  
10 the level of take, to determine if that  
11 jeopardizes the continued existence of the  
12 species, or adversely modifies their designated  
13 critical habitat.

14 In many cases it can be easier to make a  
15 jeopardy determination than it can be to not make  
16 a jeopardy determination when we know there is a  
17 significant adverse impact, as the CEC staff  
18 analysis states.

19 MR. SMITH: Okay. The letter that the  
20 Service prepared --

21 MR. DILLON: Which one?

22 MR. SMITH: -- dated April 11th, --

23 MR. DILLON: Yes.

24 MR. SMITH: -- in which the  
25 recommendation was to deny the permit --

1           MR. DILLON: This is what Mr. Ratliff is  
2 getting at. That is a different statute. The  
3 Endangered Species Act has the section 7  
4 consultation where we discuss jeopardizing a  
5 listed species, an endangered or threatened  
6 species.

7           The Magnuson Stevens Essential Fish  
8 Habitat, the full name of the Act, Magnuson  
9 Stevens Fisheries Management Conservation Act, has  
10 a standard that if you are adversely modifying the  
11 essential fish habitat, which is defined in the  
12 second paragraph of that letter, then we are  
13 obligated to make recommendations to a state  
14 agency, or I should say to a nonfederal agency  
15 when they are the lead action agency on the  
16 project.

17           And we are required to make those  
18 recommendations, also, to the federal lead action  
19 agency. The federal lead action agency is  
20 required to respond in writing to those  
21 recommendations.

22           That agency, in this case, is the  
23 Environmental Protection Agency.

24           MR. SMITH: Okay, and that's different  
25 from --

1 MR. DILLON: The Endangered Species Act.

2 MR. SMITH: -- jeopardizing -- the  
3 Endangered Species Act?

4 MR. DILLON: Yes.

5 MR. SMITH: Okay.

6 MR. DILLON: Yes.

7 MR. SMITH: Now, given what's been said  
8 about option number two and option number four,  
9 there's an interesting question of timing. And  
10 I've asked staff and the applicant this question.

11 The National Marine Fisheries Service  
12 has reviewed all relevant information up to this  
13 point. What, in your opinion, what else are we  
14 going to learn after the biological opinion is  
15 rendered? What additional information are you  
16 seeking from the applicant? What are we going to  
17 learn?

18 And I'm pursuing this, not trying to  
19 litigate this at this point, but pursuing this  
20 with respect to timing so that the Committee can  
21 put together a schedule. Are we going to hear  
22 substantive new information after 135-plus days?

23 MR. DILLON: That is something I can't  
24 answer exactly.

25 MR. SMITH: Okay.

1           MR. DILLON: I would -- your staff has  
2       recommended, or has determined that the aquatic  
3       biological impacts are a significant adverse  
4       impact. We have asked the lead federal action  
5       agency, the Environmental Protection Agency, to  
6       clarify some information so that we can determine,  
7       you know, the level of these impacts, if they  
8       raise to the jeopardy level, if they rise to the  
9       adverse modification of designated critical  
10      habitat level for the Endangered Species Act,  
11      species, which is winter run Chinook salmon,  
12      spring run Chinook salmon, Central Valley  
13      steelhead trout and Central California Coast  
14      trout. And that's all in your letter.

15           That is the determination that we have  
16      to make with the information that we have. With  
17      the additional information that we've asked for,  
18      some of which are studies that were referenced in  
19      the biological assessment, but we do not have  
20      copies of. And we will put that information  
21      together, along with EPA's biological assessment  
22      and try to make our -- and make our determination.

23           I do not feel that you need to wait for  
24      the biological opinion to go forward. We can very  
25      well determine that there are impacts that do not

1 rise to the level of jeopardy. And, you know,  
2 permit EPA to issue the permit with an incidental  
3 take statement, and then under the other laws that  
4 you administer you could decide that oh, this  
5 isn't going to go forward because it's not -- it  
6 doesn't fit in with the McAteer Petris Act, or,  
7 you know, Clean Water Act, whichever other act  
8 that you have.

9 So, -- and there's the potential that  
10 our public resources could also be wasted doing a  
11 biological opinion and have the carpet pulled out  
12 from under us.

13 MR. SMITH: Okay, and just -- go ahead.

14 PRESIDING MEMBER PERNELL: Are you --

15 MR. SMITH: One other question.

16 MR. DILLON: Sure.

17 MR. SMITH: The 135-day clock starts  
18 with the application package, the applicant's  
19 package is determined complete by the Fishery  
20 Service. And in response to an earlier question  
21 you said it might -- something to the effect it  
22 might not take that long.

23 Can you give us a ballpark for a project  
24 like this, again trying to --

25 MR. DILLON: This is --

1           MR. SMITH:  -- I'm trying to piece  
2 together scheduling issues is all.

3           MR. DILLON:  I am not comfortable giving  
4 you a ballpark, okay.  For a number of reasons,  
5 including the complexity of this project.

6           PRESIDING MEMBER PERNELL:  What is the  
7 average time it takes to get through your agency?

8           MR. DILLON:  I don't know.  Simple  
9 projects that may require a few modification can  
10 pass through in several weeks.  Other projects  
11 take considerably longer than 135 days.

12          MR. SMITH:  So you cannot give us an  
13 estimate of how long it takes even to start the  
14 135-day clock.  Are we talking a month? a week?  
15 two months?

16          MR. DILLON:  If we receive all of the  
17 information that we asked for, and upon review we  
18 determine that the application is complete, then  
19 we let the Environmental Protection Agency know  
20 that we've accepted the packet.

21          MR. SMITH:  And I guess I'm trying to  
22 figure out how long that review takes.

23          PRESIDING MEMBER PERNELL:  All right,  
24 I'm not --

25          MR. DILLON:  Well, and this --

1                   PRESIDING MEMBER PERNELL:  -- sure that  
2           he knows.

3                   MR. DILLON:  -- goes back to my -- this  
4           goes back --

5                   PRESIDING MEMBER PERNELL:  So, we want  
6           to --

7                   MR. DILLON:  -- to my former statement  
8           that it depends on the packet.

9                   PRESIDING MEMBER PERNELL:  Thank you,  
10          thank you, Mr. Dillon.

11                  MR. CARROLL:  It took four months the  
12          first time for them to identify the additional  
13          information that they needed.  The biological  
14          assessment was submitted in January.  This week we  
15          got the letter asking for the additional  
16          information.  So, I think that gives you some  
17          sense of what the timeline is likely to be.  Very  
18          long.

19                  MR. DILLON:  That's also not quite  
20          correct.  Because the --

21                  PRESIDING MEMBER PERNELL:  All right,  
22          again, --

23                  MR. DILLON:  -- Environmental Protection  
24          Agency has to initiate --

25                  PRESIDING MEMBER PERNELL:  -- wait, let



1 me stop you here. We're not litigating this.

2 MR. DILLON: Absolutely.

3 PRESIDING MEMBER PERNELL: You've been  
4 very helpful, Mr. Dillon, thank you.

5 MR. DILLON: Thank you.

6 MR. SMITH: Thank you very much.

7 PRESIDING MEMBER PERNELL: All right,  
8 any other questions?

9 MR. SMITH: No.

10 PRESIDING MEMBER PERNELL: All right,  
11 we're going to go to OCE, Our Children's Earth.  
12 Good evening.

13 MR. RAMO: Good evening. In our  
14 prehearing conference statement we identified  
15 clearly the issue of the cooling water system, and  
16 we expressed our concern about the resources that  
17 might be expended on a troubled project.

18 So, believe me, we are in agreement on  
19 the overarching policy goals that you bring here  
20 tonight.

21 And I wish there was a simple way to  
22 resolve things quickly. They would save my  
23 clients a lot of money, save me a lot of time.  
24 But I don't think there is. And I'd like to  
25 explain a little bit why.

1           Clearly option two, waiting for the  
2 biological opinion is what we suggest in our  
3 prehearing conference statement. I haven't heard  
4 anything tonight to dissuade me from that.

5           I understand the general policy reasons  
6 why you're concerned with that. But general  
7 policy reasons go out the window when there are  
8 different facts than you've ever faced before.

9           To my knowledge we've never had a  
10 situation where the staff has directly said your  
11 cooling water system won't work, and the applicant  
12 says, we want to fight it all the way. To the  
13 point that you heard the applicant tonight  
14 question the bias and good will of a federal  
15 agency. That's different.

16           With a biological opinion, it's not just  
17 another agency having a comment. It is the key  
18 federal agency in the Endangered Species Act who  
19 has a sledge hammer on this project. And I might  
20 say a very troubled project, as your own staff  
21 lawyer has just indicated, with a number of fatal  
22 flaws.

23           And that sledge hammer ability of the  
24 agency, combined with your staff saying, you know  
25 something, this cooling system is wrong. With the

1 agency which is obligated to do, the NMFS, when  
2 they are called upon to issue a recommendation to  
3 another agency, they do the best they can with the  
4 facts at the time.

5 Nothing wrong with an agency saying we  
6 have to make a recommendation on the Magnuson Act;  
7 we'll send out a letter. We have to make a  
8 decision under the Endangered Species Act; we'll  
9 look at the standard, we'll look at the  
10 information, whatever is before us; we'll make the  
11 decision. Nothing wrong with that.

12 But that's where BCDC, an agency where  
13 you have a very strict standard for disagreeing  
14 with their policy decision, also agrees. And  
15 that's not just staff, that's a Commission vote,  
16 19 to one, with federal, state and local agencies.

17 And finally, some other questions to  
18 National Marine Fisheries Service had to do with  
19 what are we going to learn from your process.  
20 Well, for people in the public learning the way  
21 they analyze decisions and how they think through  
22 the issues is crucial information for the public.

23 You're going to have public comment in  
24 your proceeding. And people are entitled to  
25 meaningfully participate and to offer an opinion.

1 That analysis is crucial. Even if there isn't in  
2 the end one new fact the applicant can come up  
3 with, not one new trawling data report on fish in  
4 the Bay that they can come up with, it is  
5 essential for people, especially those who can't  
6 afford lawyers and don't have the means to do  
7 that, to hear that opinion.

8 So in these special circumstances I  
9 think the Commission is well entitled to say,  
10 applicant, you want to go ahead with the proposal  
11 in opposition to all this, you're welcome to do  
12 it, but we're going to wait for the feds who can  
13 stop it cold.

14 And I'm putting it very bluntly, and not  
15 very lawyer-like, but I think you're very well  
16 entitled to do that. And I think otherwise you're  
17 getting a bunch of legal problems that I don't  
18 think you've thought through yet.

19 Let's talk about the option of going  
20 forward. And I think Hearing Officer --

21 PRESIDING MEMBER PERNELL: Is that your  
22 option?

23 MR. RAMO: Excuse me?

24 PRESIDING MEMBER PERNELL: I'm  
25 interested in your option --

1 MR. RAMO: My choice is --

2 PRESIDING MEMBER PERNELL: -- that's the  
3 one I want to talk about.

4 MR. RAMO: My option is to delay the  
5 biological opinion, but I want to explain why.  
6 Hearing Officer Valkosky, as I think any hearing  
7 officer would in his position, is saying to each  
8 of us, okay, but if we go ahead with the cooling  
9 water issue, do you have a short list.

10 And here's the problem, let's talk about  
11 air quality, for example. There's no way you can  
12 legally talk about air quality from a technical  
13 standpoint and a legal standpoint if you don't  
14 talk about environmental justice.

15 What's the meaning of mitigation, what's  
16 the meaning of the impacts from air quality  
17 emissions if you don't know who the receptors are?  
18 How vulnerable they are? And how the mitigation  
19 is actually going to work?

20 So how can you do that without going  
21 into at least that part of the socioeconomic  
22 analysis of the staff which talks about who's  
23 there, what are the stresses in their life, what's  
24 the public health implications of 11 tons of  
25 particulates.

1           Now, you've discussed, well, can't we  
2       just limit this to a very narrow reading of the  
3       word feasibility. Can it be constructed.

4           Well, if you make a finding that the  
5       only feasibility issue we have to address to  
6       figure out whether we can override BCDC is the  
7       most narrow definition of technical feasibility  
8       the applicant will get it turned aside  
9       immediately. And they'll be saying you're biased.  
10      What he's saying about National Marine Fisheries  
11      Service, he'll be saying that's not what the word  
12      means under CEQA, feasibility.

13           How can you determine feasibility of  
14      upland locations to determine whether you can  
15      override BCDC if you throw out the City of San  
16      Francisco.

17           PRESIDING MEMBER PERNELL: You know, let  
18      me restate why we're going through this exercise.  
19      It is to get certain issues out on the table  
20      first. We're not trying to throw anything out.  
21      We have a list of technical areas that we've got  
22      to go through. We're going to go through those  
23      unless everybody at the table agrees that they  
24      don't want to go through them.

25           So that's not what the issue is. Right

1 now I'm interested in what I thought I heard you  
2 say is that option two would be your preference.

3 MR. RAMO: Option two is my preference.  
4 But you also asked, and if I'm wrong, correct me,  
5 what issues are related to the issue of cooling  
6 water alternatives.

7 PRESIDING MEMBER PERNELL: Right, and  
8 you've added environmental justice.

9 MR. RAMO: Well, in our prehearing  
10 statement we said air quality, biology aquatic,  
11 land use, noise, public health, socioeconomic  
12 resources, visual resources, waste management,  
13 water and soils and alternatives.

14 PRESIDING MEMBER PERNELL: Right, the  
15 only one that I don't have was environmental  
16 justice and --

17 MR. RAMO: Alternatives?

18 PRESIDING MEMBER PERNELL: No, we got  
19 alternatives. Ms. Simon gave me alternatives.  
20 Socioeconomics, that's the one I don't have.

21 MR. RAMO: But, you know, every time,  
22 and I'm just trying to save time by anticipating  
23 the Hearing Officer's question, the question has  
24 been well, what's your short list. And --

25 PRESIDING MEMBER PERNELL: Well, this

1 short list is getting longer and longer, and I  
2 understand --

3 MR. RAMO: But that's --

4 PRESIDING MEMBER PERNELL: -- what he's  
5 trying to do, but it doesn't seem like we have a  
6 short list.

7 MR. RAMO: Well, if we do have a short  
8 list --

9 PRESIDING MEMBER PERNELL: So, I'm just  
10 adding the things that, as everyone speaks, if  
11 there's another topic that comes up I add it to  
12 the list. So right now we don't have a short  
13 list.

14 MR. RAMO: If there's no short list then  
15 the option of saying let's do cooling water first  
16 to save the resources of everybody doesn't make  
17 any sense. Because in effect they're going to say  
18 I expect that's what's been in their data  
19 responses and the papers, you know, there's a  
20 problem with doing wet/dry hybrid. You have to  
21 get City approval.

22 Just as it's been pointed out by your  
23 staff, and if they can point it out I hope I'm  
24 allowed to point it out, if you go through once-  
25 through cooling you've got to get an easement.



1           Well, what determines whether the City  
2       cooperates. Supervisor Maxwell's ordinance. And  
3       if you don't review whether there's compliance  
4       with the ordinance, then you aren't addressing an  
5       issue of feasibility that they're entitled to  
6       raise, which would render any decision you've made  
7       improper.

8           Now, I would love for you to issue a  
9       decision, obviously given the position that we're  
10      contending with, next week that gee, your once-  
11      through cooling is wrong, go back and start again.  
12      I wish they would do it voluntarily, but they're  
13      apparently set on not doing that.

14           But I don't want a decision like that  
15      that's easily reversible when questioned and  
16      challenged. That's my concern. Thank you.

17           PRESIDING MEMBER PERNELL: And I  
18      appreciate that, and not in a week. I mean most  
19      of our decisions, some of them have been  
20      challenged but none of them have been overturned.  
21      And that's because we're very thorough with what  
22      we do.

23           But, again, we're not trying to sidestep  
24      any issue. And our process, we've got to go  
25      through these issues unless everybody agrees that

1       it's not of a concern. So we're not sidestepping  
2       anything here. And please don't get the wrong  
3       impression --

4               MR. RAMO: I understand.

5               PRESIDING MEMBER PERNELL: -- of why  
6       we're doing that. But I do appreciate your  
7       comments, and add EJ to the mix.

8               MR. RAMO: And that's my way up for  
9       option, too; it's the only way to avoid those  
10      problems and avoid unnecessary duplication.

11              PRESIDING MEMBER PERNELL: Right. Okay.  
12      Do you have any questions for -- all right. Well,  
13      you must have done well, there's no questions at  
14      all. That was good.

15              Okay, we're now on NPOC.

16              MS. OTA: Thank you.

17              PRESIDING MEMBER PERNELL: How are you?

18              MS. OTA: Good. A little tired.

19              PRESIDING MEMBER PERNELL: Thanks for  
20      your patience.

21              MS. OTA: We also support the second  
22      option, waiting for the biological assessment. I  
23      agree that the process, the process is important  
24      public information, but I also think that simply  
25      the fact of the outcome of the biological opinion

1 is an important piece of information that should  
2 factor into the CEC's decision making process.

3 And from our point of view, we are the  
4 neighboring landowners; we are the people who are  
5 going to be most impacted by this project. And  
6 our resources are limited. And having to go  
7 through a whole hearing process on the things that  
8 affect us the most, the visual, the noise, the  
9 air, with a prospect of having to do it all over  
10 again in the next few months, is not very  
11 appealing to us.

12 And what may be the outcome of this kind  
13 of process is that the people who are most  
14 impacted have the least voice, because we have the  
15 least resources. And I think that's a very  
16 important consideration for this Committee.

17 PRESIDING MEMBER PERNELL: Okay. And I  
18 don't suppose you have a short list?

19 MS. OTA: No.

20 PRESIDING MEMBER PERNELL: Okay.

21 MS. OTA: I guess I would add hazardous  
22 materials. Sorry.

23 PRESIDING MEMBER PERNELL: Hazardous  
24 materials. I don't think I have that. That's a  
25 new one.

1                   Okay, thank you very much. No  
2 questions.

3                   All right, PBNA.

4                   MR. BOSS: Hi. Joe Boss here. We would  
5 definitely concur with all the other intervenors  
6 that option two is not only preferable, but  
7 logical.

8                   We talk about the resources and with all  
9 due respect to this Commission and the CEC Staff  
10 and everyone else, there's tremendous, tremendous,  
11 tremendous resources being expended by  
12 intervenors. And I'm concerned because I'm  
13 strictly on a volunteer basis.

14                  And although I appreciate Mr. Carroll  
15 inviting the public to take a second bite, his  
16 bites get paid for, ours don't.

17                  So rather than look at this as a  
18 resource issue, I would much prefer to see this  
19 Commission wait until the federal issue is  
20 resolved, and resolve the issue of whether or not  
21 once-through cooling can be used.

22                  You can add cultural resources to the  
23 short list because if it ends up going with air  
24 cooling, there are two historic buildings  
25 identified by Mirant's cultural resource person

1       that are directly across the street. They're  
2       actually part of the adjoining property owners.

3               And there could be tremendous impacts  
4       that we have no idea until we know what the  
5       thing's going to look like.

6               So, that's our position. Thank you.

7               PRESIDING MEMBER PERNELL: Okay.

8       Questions? All right, thank you. And I do  
9       appreciate everyone going through this exercise  
10      with us. It's a little different than we normally  
11      do, but again we were looking to get the central  
12      issue out on the table.

13              And now in terms of the prehearing  
14      conference and the statements, --

15              (Pause.)

16              PRESIDING MEMBER PERNELL: All right, at  
17      this time I want to turn the hearing over to our  
18      Hearing Officer, Mr. Valkosky.

19              HEARING OFFICER VALKOSKY: Thanks. This  
20      portion of the prehearing conference will focus on  
21      the contents of the prehearing conference  
22      statements. Those are summarized on the handouts  
23      that all of you should have one, on the table.  
24      And basically that is my representation of  
25      witnesses, desire to cross-examine, and so forth,

1 as reflected on your prehearing conference  
2 statements.

3 Also I'd like to thank the parties for  
4 consolidating positions of various intervenors to  
5 the extent possible. And for purposes of this  
6 discussion I intend to proceed with each party, in  
7 turn. And I'd like you to indicate first any  
8 corrections to that discussion outline which may  
9 pertain to your various witnesses, desire to  
10 cross-examine and so forth; the Committee could  
11 also seek various clarifications from the parties.

12 Also I'd like the parties to be aware  
13 the Committee does not intend to relitigate the  
14 general matters contained in the BCDC report. I  
15 bring this up since the prehearing conference  
16 statements from various parties seem to express  
17 disagreement with BCDC's findings specifically  
18 concerning Bay access, associated mitigation,  
19 among other issues.

20 Parties disagreeing with the BCDC  
21 findings should be prepared to so state  
22 specifically, and to specifically explain to what  
23 extent they believe the Energy Commission could  
24 modify the requirements of the BCDC report.

25 Remember, the Commission's statute says

1       that they can only be modified, to my reading, at  
2       least, if they're infeasible, or if they create  
3       greater impacts. That does not mean if you  
4       disagree with them we can modify necessarily.  
5       I assume you've gone through the BCDC process  
6       already.

7               Next, I'd like to advise the parties  
8       that the times requested for direct and cross-  
9       examination on the prehearing conference  
10      statements, while I understand they're only  
11      estimates, are wholly unrealistic in several  
12      instances.

13             So far they total about 300 hours, which  
14      is about 40 hearing days. And it's not complete.  
15      So that's just not going to happen, folks. You  
16      know, I mean it just cannot.

17             Parties should reduce the amount of time  
18      to something much more realistic. You know, one  
19      of the ways to do it is to take advantage of  
20      opportunities to consolidate direct and cross-  
21      examination, as appropriate, with a party sharing  
22      your view.

23             And finally, before the conclusion of  
24      the parties' presentation, I'd like each party to  
25      indicate whether it prefers a simultaneous filing

1 of written testimony before the hearings by all  
2 parties, or a filing schedule requiring applicant  
3 to file first, followed approximately 10 or 14  
4 days, something like that, later by all other  
5 parties.

6 Are there any preliminary questions?

7 Okay, now I would --

8 PRESIDING MEMBER PERNELL: Ms. Simon.

9 HEARING OFFICER VALKOSKY: Okay, Ms.

10 Simon.

11 MS. SIMON: Slow on the uptake on the  
12 preliminary question. Thank you, Commissioner  
13 Pernell.

14 Is the Hearing Officer contemplating, as  
15 I think your last comment indicates, that all  
16 testimony will be prefiled in writing?

17 HEARING OFFICER VALKOSKY: Yes.

18 MS. SIMON: Thank you.

19 HEARING OFFICER VALKOSKY: Any other  
20 preliminary questions?

21 Okay. Mr. Carroll, any corrections to  
22 the stuff as reflected on discussion outline? Or,  
23 excuse me, before you answer that, let me ask one  
24 question. First four topics listed there, I have  
25 no party that desired to cross-examine.



1           Is that correct? Are these potentially  
2 acceptable to the parties to be taken by  
3 declaration?

4           PRESIDING MEMBER PERNELL: Yes.

5           HEARING OFFICER VALKOSKY: Yes? Ms.  
6 Minor, did you have a --

7           MS. MINOR: Just a comment. We actually  
8 have not had a chance to study this document. It  
9 was on the desk when we arrived. I generally was  
10 aware of what you were trying to achieve by it.

11          But to the extent you would like us to  
12 go through it tonight and be very specific with  
13 you about areas that we could potentially  
14 consolidate testimony with other parties, and  
15 reduce the amount of time allocated for direct  
16 testimony, I believe the City's going to need more  
17 time to be able to respond to you in a meaningful  
18 way.

19          HEARING OFFICER VALKOSKY: Okay, I can  
20 understand the consolidating part. But on the  
21 City's prehearing conference statement, most of  
22 the other parties have indicated something on the  
23 order of 10 or 15 minutes, for example, to sponsor  
24 their written direct testimony, to summarize and  
25 sponsor it.

1           As I read your statement, and again, I  
2   understand they were estimates, but you had  
3   multiple days for various instances. Now, I  
4   assume that did not consider just sponsoring in  
5   prefiled testimony. Am I correct in that?  
6   Because otherwise, frankly, I have a lot of  
7   difficuly seeing why you'd need that much time.

8           Yeah, one of the options is we could  
9   perhaps entertain --

10           PRESIDING MEMBER PERNELL: Can we go off  
11   the record.

12           (Brief recess.)

13           PRESIDING MEMBER PERNELL: I would ask  
14   everybody at the front table to make sure your  
15   mike is on, because there's some people in the  
16   back that can't hear you. So we just want to make  
17   sure the mikes are on. And we're back on the  
18   record. Mr. Valkosky.

19           HEARING OFFICER VALKOSKY: Thank you,  
20   Commissioner.

21           Okay, the first question was, on your  
22   outline, the four topics which apparently can be  
23   taken by declaration, is there any objection to  
24   taking those topics by declaration from any of the  
25   parties. And unless I see someone object I'll

1 assume there are no objections.

2 I see no objections. Okay.

3 For staff's, and assuming the Committee  
4 orders that these be taken by declaration, there  
5 would be additional instructions for staff's  
6 witness based on its FSA testimony, to address the  
7 variety of the milestones as consistent with  
8 recent Commission policy to, I think, correct an  
9 erroneous statement of the authority of the  
10 Executive Director appearing at page 8-11 of the  
11 FSA.

12 And to indicate an agreement or  
13 disagreement with BCDC's conditions of  
14 certification concerning abandonment and closure.  
15 So if the Committee elects to take those, there  
16 would be directions, as just a heads up.

17 Moving along to Mr. Carroll. Any  
18 corrections?

19 MR. CARROLL: None that we can see.  
20 We've obviously haven't had a lot of time to look  
21 at it, but we've quickly done a cross-check and it  
22 appears to be consistent with our prehearing  
23 filing statement.

24 HEARING OFFICER VALKOSKY: How about  
25 times for cross-examination?

1 MR. CARROLL: I'm happy to go through  
2 and give an estimate, but it's going to be really  
3 rough because it's so dependent on what the direct  
4 testimony is.

5 HEARING OFFICER VALKOSKY: I understand  
6 that, and I hope the parties can realize that to  
7 the extent the Committee may wish to schedule  
8 hearings, this is the only way that we have to get  
9 a handle on how long the hearings are going to  
10 take.

11 MR. CARROLL: I'm happy to give an  
12 estimate.

13 HEARING OFFICER VALKOSKY: Please.

14 MR. CARROLL: On cultural resources, I  
15 would estimate one hour. On traffic and  
16 transportation I would estimate -- I'm just going  
17 to do quarter-hour increments -- a quarter hour.

18 On facility design I'm going to estimate  
19 an hour. On power plant efficiency a quarter of  
20 an hour. Reliability, one-half hour. Water and  
21 soils, one-half hour. Waste management, one-  
22 quarter hour. Hazardous materials management,  
23 one-half hour.

24 Transmission line safety and nuisance,  
25 we don't anticipate any cross-examination that

1       topic. Transmission system engineering, one-half  
2       hour. Local system effects, one hour. Aquatic  
3       biology, two hours. Noise, one-half hour. Visual  
4       resources, one-half hour.

5               Land use, including BCDC, one hour. Air  
6       quality, three hours. Public health, three hours.  
7       Socioeconomic and EJ, one hour. Alternatives, one  
8       hour.

9               HEARING OFFICER VALKOSKY: Okay. Did  
10      you have a specific witness identified that I  
11      missed for applicant in power plant efficiency and  
12      transmission line safety and nuisance? And local  
13      system effects?

14              MR. CARROLL: For transmission line  
15      safety and nuisance it would be the same witnesses  
16      identified for electrical transmission, William  
17      Stevenson and Robert Jenkins.

18              For power plant --

19              HEARING OFFICER VALKOSKY: And, excuse  
20      me, the time for direct?

21              MR. CARROLL: Fourteen the same as 15.

22              HEARING OFFICER VALKOSKY: Okay, thank  
23      you. I'm sorry, Mr. Carroll.

24              MR. CARROLL: Yes, I think that would be  
25      the same time, so 15 minutes with those two

1 witnesses.

2 With respect to power plant efficiency  
3 the witness would be Robert Weatherwax, with a  
4 one-half hour estimate.

5 And local system effects would be  
6 Jenkins.

7 HEARING OFFICER VALKOSKY: For 15  
8 minutes?

9 MR. CARROLL: I'd say a half hour.

10 HEARING OFFICER VALKOSKY: Half hour,  
11 okay.

12 Okay, and last, simultaneous or  
13 staggered filing of testimony?

14 MR. CARROLL: Simultaneous.

15 HEARING OFFICER VALKOSKY: Thank you.  
16 Anything else you'd care to add, Mr. Carroll?

17 MR. CARROLL: No, thank you.

18 HEARING OFFICER VALKOSKY: Mr. Ratliff,  
19 any corrections?

20 MR. RATLIFF: Some minor changes that  
21 are additive in nature.

22 For power plant efficiency and power  
23 plant reliability we would add as a witness  
24 potentially Mr. Steven Baker, who supervised the  
25 testimony of Mr. Henneforth.

1           And for air quality and public health we  
2       would add the supervisor in those areas, Mike  
3       Ringer, as an additional witness on what we assume  
4       will be a panel. And for public health we would  
5       add Dr. Alvin Greenberg.

6           MR. CARROLL: I'm sorry, I didn't catch  
7       the name on air quality?

8           MR. RATLIFF: Dr. Alvin Greenberg.

9           MR. CARROLL: No, no, Ringer we're  
10      informed.

11          HEARING OFFICER VALKOSKY: Ringer for  
12      air quality.

13          MR. RATLIFF: Ringer for air quality;  
14      I'm sorry.

15          And for public health I thought you  
16      might also have the Air District listed there.  
17      You have them under air quality. They don't make  
18      the distinction between air quality and public  
19      health. They will be testifying, I think, on  
20      both. That was --

21          HEARING OFFICER VALKOSKY: Well, one of  
22      the options would be to take both of those topics  
23      together.

24          MR. RATLIFF: Yes, absolutely. Their  
25      counsel said that he would present his own

1 witnesses, so that's our expectation right now.

2 HEARING OFFICER VALKOSKY: Okay.

3 MR. RATLIFF: As to alternatives, for  
4 the staff witness we only have listed Ms. Lee; but  
5 I think in reality she's an, in essence, for  
6 alternatives she's a summary witness for other  
7 topic areas, as you know, such as air quality and  
8 visual and noise. As well as other disciplines.

9 We may want to have supplementary  
10 witnesses that would supplement her testimony to  
11 be available for cross-examination.

12 HEARING OFFICER VALKOSKY: Do you have  
13 the identification of any of those witnesses, or,  
14 for the time being we could just go with  
15 unidentified.

16 PRESIDING MEMBER PERNELL: Well, at some  
17 point we're going to need to know who they are,  
18 right?

19 HEARING OFFICER VALKOSKY: When they  
20 file the testimony, yes, that's correct.

21 Mr. Ratliff, do you have the  
22 identification for an additional alternatives  
23 witness, or is that --

24 MR. RATLIFF: Well, for instance, in  
25 alternatives we would expect to make available for



1 cross-examination under that topic Michael  
2 Clayton, our visual witness; at least one of our  
3 air quality witnesses. Here we're talking about  
4 cooling option alternatives for air quality.

5 And our noise witness, as well, who  
6 is --

7 HEARING OFFICER VALKOSKY: Mr. Buntin,  
8 or Ms. Buntin?

9 MR. RATLIFF: Mr. Buntin.

10 HEARING OFFICER VALKOSKY: Okay.

11 MR. RATLIFF: And I'm not sure what  
12 other ares may be necessary, possibly the land use  
13 witness, as well. But it might depend on the  
14 nature of the issues that people are interested in  
15 cross-examining.

16 HEARING OFFICER VALKOSKY: I understand.  
17 We're just really trying to get a rough handle --

18 MR. RATLIFF: Yes.

19 HEARING OFFICER VALKOSKY: -- on what  
20 commitments we'd be looking at at this time.  
21 Okay, how about on direct, I know in your  
22 prehearing conference statement you said you  
23 anticipated ten minutes per witness on direct. I  
24 left some of the parens blank in light of the  
25 other witnesses. Do you want to --

1           MR. RATLIFF: We hope that we can let  
2           the written testimony largely speak for itself,  
3           and do short summaries, and perhaps only make a  
4           few important points on direct. And then let it  
5           be cross-examination. So I'm hoping it will be  
6           less than ten minutes on direct.

7           HEARING OFFICER VALKOSKY: Okay. So, in  
8           other words, you're not anticipating more at this  
9           time?

10          MR. RATLIFF: No, not in most areas.  
11          There may be areas --

12          HEARING OFFICER VALKOSKY: Well, are  
13          there --

14          MR. RATLIFF: -- critical, for instance  
15          the aquatic biology --

16          HEARING OFFICER VALKOSKY: Okay, how  
17          long would you like on that one? You've got three  
18          witnesses identified.

19          MR. RATLIFF: Let me say 45 minutes.  
20          And I think that's hopefully an overstatement,  
21          but --

22          HEARING OFFICER VALKOSKY: Again,  
23          understand everything is just an estimate at this  
24          point. And any other additions above the ten  
25          minutes for your other topics?

1 MR. RATLIFF: I think for transmission  
2 system engineering we're going to have additional  
3 time. I would say half an hour.

4 HEARING OFFICER VALKOSKY: Okay.

5 MR. RATLIFF: And for air quality let's  
6 say 15 minutes. And for public health let's say  
7 30.

8 PRESIDING MEMBER PERNELL: For what?

9 HEARING OFFICER VALKOSKY: Public  
10 health.

11 MR. RATLIFF: Thirty minutes on public  
12 health.

13 HEARING OFFICER VALKOSKY: Socio and  
14 alternatives?

15 MR. RATLIFF: I think 15 minutes for  
16 alternatives. I'm going to stick with ten minutes  
17 on socio.

18 HEARING OFFICER VALKOSKY: Okay. How  
19 about cross, starting with cultural?

20 MR. RATLIFF: For cultural resources, an  
21 hour. For traffic and transportation, a quarter  
22 of an hour. Facility design, a quarter of an  
23 hour. Power plant efficiency, quarter of an hour.

24 Again, this is without knowing what  
25 testimony is going to be filed, so it's very

1 conditional on --

2 HEARING OFFICER VALKOSKY: Understood.

3 MR. RATLIFF: Power plant reliability,  
4 quarter of an hour. Water and soils, half an  
5 hour. Waste management, half an hour. Hazardous  
6 materials, half an hour.

7 Nothing on transmission line safety and  
8 nuisance. Transportation system engineering, a  
9 quarter of an hour. Local system effect, half an  
10 hour. Aquatic biology, three hours. Noise, half  
11 an hour.

12 Visual resources, a half hour. Land  
13 use, an hour. And air quality, two hours. Public  
14 health, two hours. Socioeconomic, half an hour.  
15 Alternatives, two hours.

16 HEARING OFFICER VALKOSKY: On air  
17 quality, do you have any idea how long the  
18 District will take? Am I correct in understanding  
19 that you're not going to present the witnesses,  
20 but the District Counsel is going to present them?

21 MR. RATLIFF: That's the current  
22 understanding that we have with them.

23 HEARING OFFICER VALKOSKY: Okay.

24 MR. RATLIFF: That may change. I've got  
25 to talk with them and confirm that that's the

1 case.

2 HEARING OFFICER VALKOSKY: Do you have  
3 any idea as to the time?

4 MR. RATLIFF: I would guess ten minutes  
5 per witness; and I don't know how many witnesses,  
6 but they mentioned as many as three. So, one  
7 might say half an hour for direct testimony.

8 HEARING OFFICER VALKOSKY: Okay, and  
9 will staff be presenting any witnesses from Cal-  
10 ISO, --

11 MR. RATLIFF: Yes, we will.

12 HEARING OFFICER VALKOSKY: -- Fish and  
13 Game, BCDC or National Marine Fisheries?

14 MR. RATLIFF: Well, we typically sponsor  
15 the Air District witnesses and the ISO witnesses,  
16 and certainly the ISO has two witnesses that will  
17 testify under local system effects.

18 We may also have, I forgot to say we may  
19 have an ISO witness in transmission system  
20 engineering, but we haven't had an indication of  
21 that yet. That would be, I think, a very brief  
22 piece of testimony essentially confirming our own  
23 conclusions.

24 HEARING OFFICER VALKOSKY: Okay. Any --

25 MR. RATLIFF: But with local system

1 effects we have two witnesses from the CalISO.

2 HEARING OFFICER VALKOSKY: And about how  
3 much time to you anticipate?

4 MR. RATLIFF: Again, I have not talked  
5 to these witnesses, but let's say ten minutes  
6 each.

7 HEARING OFFICER VALKOSKY: So 30 minutes  
8 would be safe?

9 MR. RATLIFF: Yes.

10 HEARING OFFICER VALKOSKY: How about  
11 Fish and Game, BCDC or the National Marine  
12 Fisheries?

13 MR. RATLIFF: I had a chance tonight to  
14 talk with the agencies, and all of them, I think  
15 each of them indicated that they want to go back  
16 and talk with their responsible management, and to  
17 talk with us further about what would be involved  
18 in appearing as witnesses for sworn testimony.

19 And we do not have, as we do with the  
20 Air Districts, or the ISO, we do not have  
21 experience typically of sponsoring these agencies  
22 as witnesses, but I told them that if they wish to  
23 present sworn testimony I would present them as  
24 witnesses if they so chose. Or they could, if  
25 they preferred, have their own counsel from their

1 own agency.

2 Although I don't know if that's the  
3 Committee's wish, I thought that would probably be  
4 consistent with the Committee's wish.

5 HEARING OFFICER VALKOSKY: No, that  
6 would certainly be consistent as long as they  
7 appear. That's the main thing, is to get an  
8 appearance. When will these conversations  
9 conclude? What I'm getting to is when can you let  
10 the Committee and the other parties know how  
11 witnesses from these agencies will proceed?

12 MR. RATLIFF: I can only say I'll try to  
13 get back to you this week. They seem to have  
14 needed to confer with each other or with their  
15 management before they decided what they were  
16 going to do about this.

17 HEARING OFFICER VALKOSKY: Okay. And if  
18 you could just reduce that to writing and proof it  
19 upon all the parties, I'm sure we'd all appreciate  
20 it.

21 MR. RATLIFF: Okay.

22 HEARING OFFICER VALKOSKY: Thank you.  
23 Does staff have any reaction to the FSA changes  
24 proposed by applicant in appendix C of its  
25 prehearing conference statement?

1 MR. RATLIFF: No.

2 HEARING OFFICER VALKOSKY: Okay. In  
3 your opinion is it necessary that staff analyze  
4 the San Francisco energy plan?

5 MR. RATLIFF: No.

6 HEARING OFFICER VALKOSKY: Why not?

7 MR. RATLIFF: Well, --

8 HEARING OFFICER VALKOSKY: Briefly, I  
9 mean you don't have to -- you know, just to get --

10 MR. RATLIFF: We think that the energy  
11 plan is a significant document, and a very  
12 interesting document that forwards and supplements  
13 the alternatives discussion.

14 We don't necessarily disagree with any  
15 particular aspect of it, or necessarily say we  
16 agree with any particular aspect of it, but we  
17 don't know in many instances exactly what  
18 underlying assumptions were, so we aren't able to  
19 take a position on it, absent that.

20 Certainly I think what the energy plan  
21 indicates is that San Francisco conceivably could  
22 do a lot of different things to try to meet its  
23 energy needs and provide system reliability.

24 It's not the staff's present -- we don't  
25 consider our mission to try to say that that's not



1        what they should do. Or that any particular, I  
2        think their plan is quite good in the sense of  
3        certain issues that may go to the feasibility of  
4        some of their own proposals for some of the issues  
5        that may cast certain -- shed a certain degree of  
6        uncertainty on some of the things they proposed.

7                I don't think we intend to basically  
8        testify at length on their energy plan. I think  
9        it's just an additional piece of important  
10       alternatives testimony that they have. I think  
11       our witnesses may be presumably questioned about  
12       what they think about it, or think about the  
13       feasibility of certain things in it. And that  
14       would be appropriate.

15               But, unless the Committee tells us that  
16       we should, in fact, address specific issues in  
17       that plan, we have not intended to file any  
18       additional testimony on it.

19               If we were to do so we might have to do  
20       discovery to get more information on the  
21       underlying bases for certain of the assumptions.

22               HEARING OFFICER VALKOSKY: Okay, but I  
23       did understand you to say that at least your  
24       alternatives witness will have reviewed it and  
25       could be prepared to render their opinion?

1 MR. RATLIFF: Yes.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Next, in I believe it's facility design, in the  
4 FSA, indicated you were pursuing a redesign,  
5 possibly pursuing a redesign to avoid the  
6 likelihood of the common fault single outage  
7 scenario?

8 MR. RATLIFF: Well, we understand that  
9 that issue's being addressed by the ISO. That  
10 there have already been discussions with the  
11 applicant in its, I think it's called their grid  
12 planning meetings. The applicant may be able to  
13 tell you more about that.

14 It's our expectation that that issue, in  
15 fact our understanding is that solutions to that  
16 problem have already been discussed. And that  
17 again maybe Mr. Harrer or Mr. Carroll could tell  
18 you more, but we think that they have already  
19 arrived at some potential design change that may  
20 satisfactorily address that problem.

21 HEARING OFFICER VALKOSKY: Okay, is that  
22 a correct estimation? And if so, will it be  
23 covered in your testimony on facility design?

24 MR. CARROLL: Yes, that is correct.

25 And, yes, it will be covered. We've had extensive

1       conversations with the ISO regarding some  
2       potential changes to the plant.

3               We're looking at them right now to see  
4       how feasible they are.

5               HEARING OFFICER VALKOSKY:   Okay, and  
6       your prepared testimony will address this?

7               MR. CARROLL:   Yes.

8               HEARING OFFICER VALKOSKY:   Thank you.  
9       Mr. Ratliff, does the FSA include analysis of the  
10      provisions, and I'm referring specifically to the  
11      additional conditions contained in the BCDC  
12      report?

13              MR. RATLIFF:   No.

14              HEARING OFFICER VALKOSKY:   Should it?  
15      Should the FSA consider and reflect upon the  
16      provisions of the BCDC report?

17              MR. RATLIFF:   I don't know what it would  
18      say.   I think the BCDC report is largely based on  
19      the staff analysis, itself.

20              BCDC did not undertake their own  
21      biological investigation of the impacts.   Rather  
22      they looked at what the applicant provided and  
23      what the staff provided to reach their own  
24      conclusions.

25              HEARING OFFICER VALKOSKY:   Okay, but how

1 about suitability of the public access mitigation,  
2 for example? Things like that. Because BCDC  
3 covers more than just the biological.

4 MR. RATLIFF: We have not addressed  
5 that. I think, as you pointed out, it's not clear  
6 to me what usefulness would be from our addressing  
7 that. BCDC basically makes recommendations that  
8 can only be, as I understand it, changed by the  
9 literal terms of the statute by findings that are  
10 suggested at 25525.

11 So we think that if, in fact, once-  
12 through cooling is utilized, those are the  
13 requirements that we put into the final decision.

14 HEARING OFFICER VALKOSKY: Well, okay,  
15 put differently, would it be fair to characterize  
16 the staff testimony as not challenging any of the  
17 provisions of the BCDC report?

18 MR. RATLIFF: Well, I have not heard of  
19 any plan to provide such testimony. And I have  
20 not heard staff question the provisions that are  
21 in the report.

22 Again, we haven't discussed that.

23 HEARING OFFICER VALKOSKY: Okay. Does  
24 the staff, in its conditions, intend to  
25 incorporate the conditions contained in the BCDC

1 report? Or is it staff's intention that these be  
2 separate conditions?

3 MR. RATLIFF: Well, that's a good  
4 question. I haven't thought about it, but it  
5 would seem to me that we would probably want to  
6 recommend those conditions just as we incorporate  
7 the FDOC conditions into our own document.

8 HEARING OFFICER VALKOSKY: So will  
9 your --

10 MR. RATLIFF: Will we actually issue --

11 HEARING OFFICER VALKOSKY: Will  
12 supplements to your testimony --

13 MR. RATLIFF: -- issues incorporated?

14 HEARING OFFICER VALKOSKY: -- indicate  
15 these? Yes.

16 MR. RATLIFF: Could I get back to you on  
17 that? I think I'd like to discuss it with our  
18 people.

19 HEARING OFFICER VALKOSKY: Okay. If you  
20 could get back by the same time you're getting  
21 back on the --

22 MR. RATLIFF: Okay.

23 HEARING OFFICER VALKOSKY: -- handling  
24 of the other witnesses, that would be great.  
25 Appreciate that.

1           Almost last question. City and County  
2 of San Francisco indicates that you owe them some  
3 information; this is on page 7 of their prehearing  
4 conference statement. Do you?

5           MR. RATLIFF: I believe that you're  
6 talking about the cooling study cost data, is that  
7 correct?

8           HEARING OFFICER VALKOSKY: I believe  
9 that's what they reference in their --

10          MR. RATLIFF: I believe it was --

11          HEARING OFFICER VALKOSKY: -- prehearing  
12 conference. Okay, well, -- I will ask Ms. Minor.

13          MR. RATLIFF: -- perhaps as of today.

14          HEARING OFFICER VALKOSKY: Okay, but to  
15 your knowledge you don't own them any additional  
16 information?

17          MR. RATLIFF: No, it was provided.

18          HEARING OFFICER VALKOSKY: Thank you.  
19 Last, simultaneous or staggered filing of  
20 testimony?

21          MR. RATLIFF: I'm not sure I understand  
22 the question.

23          HEARING OFFICER VALKOSKY: Applicant  
24 files first, all the other parties file their  
25 prepared testimony some period later, probably 10

1 to 14 days, something like that.

2 MR. RATLIFF: That sounds fine with us.

3 We have a question of, you know, the staff filed  
4 its FSA I think in February --

5 HEARING OFFICER VALKOSKY: It was  
6 March -- well, the last part was March 25th.

7 MR. RATLIFF: -- it's been out for  
8 awhile.

9 HEARING OFFICER VALKOSKY: Yeah.

10 MR. RATLIFF: People have had a chance  
11 to look at it and assess it and criticize it. At  
12 some point I wonder how will the staff, I think it  
13 might be good if we discussed how the staff, in  
14 fact, is able to rebut the criticisms of its own  
15 testimony. Will we be allowed to file rebuttal  
16 testimony?

17 HEARING OFFICER VALKOSKY: Well, I would  
18 just term that as, you know, supplemental  
19 testimony that you could file with all of the  
20 other parties.

21 MR. RATLIFF: Okay.

22 HEARING OFFICER VALKOSKY: That would be  
23 under, you know, again under either scenario,  
24 whether it's a simultaneous or a staggered filing.  
25 But let's just call it supplemental testimony.

1           MR. RATLIFF: That's fine, that's our  
2           greatest concern is just that we be able to answer  
3           some of the criticisms that are made of our own  
4           testimony.

5           HEARING OFFICER VALKOSKY: Thank you.  
6           Do you have anything else to add to this?

7           MR. RATLIFF: No.

8           HEARING OFFICER VALKOSKY: Okay, Ms.  
9           Minor. Any corrections? And, please, while we're  
10          going through this, you have indicated on several  
11          topics multiple days. I really need some  
12          exposition of that.

13          Okay. Any corrections, first of all, to  
14          what's there?

15          MS. MINOR: We did not reflect in the  
16          project introduction and description section  
17          issues that we have related to the design of unit  
18          7, specifically as it relates to the common modes  
19          of failure and the single contingency issue.

20          We reflected our concern about that  
21          issue in a number of different topics, such as  
22          facility design.

23          HEARING OFFICER VALKOSKY: Right.

24          MS. MINOR: So that's why we show no  
25          testimony under what you call number five, which



1 is project introduction and description.

2 HEARING OFFICER VALKOSKY: Fine, and as  
3 I understand it then, you're not proposing a  
4 witness because that would be covered by --

5 MS. MINOR: That's correct, in several  
6 other topic areas.

7 HEARING OFFICER VALKOSKY: Yeah, okay.

8 MS. MINOR: Are you going to take that  
9 issue up again later, or should I say a little bit  
10 more about issues related to the single  
11 contingency and the status of that?

12 HEARING OFFICER VALKOSKY: You know, I  
13 think it's just easier to follow if you can  
14 just --

15 MS. MINOR: Kind of go through it, okay.

16 HEARING OFFICER VALKOSKY: -- follow the  
17 agenda, yeah.

18 MS. MINOR: All right. Cultural  
19 resources, just a caveat that covers what we tried  
20 to do. In our prehearing statement we were clear  
21 about the fact that it was very difficult to  
22 anticipate issues.

23 We have not had extensive conversations  
24 with Mirant on some of the substantive issues. It  
25 was not clear to us until we received the staff's

1 prehearing statement, for example, that in fact  
2 Mirant continued to oppose some of the air quality  
3 mitigation that had been proposed.

4 So, in fact, we drafted our prehearing  
5 statement and we hoped you found the matrix that  
6 we prepared helpful without a lot of information  
7 about the direct testimony that would be filed by,  
8 in particular, the applicant.

9 There is a significant glitch, when you  
10 look at the amount of time. We included in this  
11 matrix direct testimony estimate, and that  
12 shouldn't be direct testimony estimate. We were  
13 trying to anticipate both direct, as well as  
14 cross-examination.

15 HEARING OFFICER VALKOSKY: Okay.

16 MS. MINOR: Clearly understanding that  
17 we don't know what the issues are that are going  
18 to be raised by the applicant. And the City has  
19 not, in fact, written its direct testimony as of  
20 yet.

21 So, all the time periods that you see  
22 there really were our effort when we filed the  
23 statement to reflect both direct, as well as  
24 cross-examination.

25 Now if I can try to be helpful tonight

1 and go through each topic area like --

2 HEARING OFFICER VALKOSKY: Please.

3 MS. MINOR: -- you're asking us to.

4 HEARING OFFICER VALKOSKY: Please.

5 MS. MINOR: Cultural resources, we have  
6 listed three witnesses and potentially an  
7 unidentified witness. We certainly can reduce the  
8 direct testimony to probably 30 minutes per  
9 witness.

10 HEARING OFFICER VALKOSKY: Okay, so that  
11 would be two hours max, 90 minutes, 90 to 120  
12 minutes?

13 MS. MINOR: That's correct.

14 HEARING OFFICER VALKOSKY: Okay.

15 PRESIDING MEMBER PERNELL: When are you  
16 planning on identifying your unidentified  
17 witnesses?

18 MS. MINOR: Again, it's very difficult  
19 for us to anticipate witnesses when we're not sure  
20 what all the issues are. And so in areas where we  
21 thought that the applicant could potentially  
22 assert a position that we weren't clear of, we  
23 listed an unidentified witness as a placeholder.

24 PRESIDING MEMBER PERNELL: But in our  
25 process you know that once the hearings start your

1 witnesses have to be listed, and everybody have  
2 access to their testimony?

3 MS. MINOR: Yes. No. We do understand  
4 that, and in that regard we certainly want to  
5 support staggered testimony. The issues are not  
6 clear. And we think it's very incumbent upon  
7 Mirant to file its testimony.

8 It will be a way for all the other  
9 parties to narrow the scope of the issues and we  
10 hope, actually eliminate some testimony, if, in  
11 fact, we find that it's not an issue that's being  
12 protested or there are ongoing disputes about.

13 PRESIDING MEMBER PERNELL: All right. I  
14 just want to make sure that you understand,  
15 because I don't want your witness not being able  
16 to testify because they're not listed.

17 MS. MINOR: I'm not going to file  
18 testimony by an unidentified witness.

19 PRESIDING MEMBER PERNELL: Okay.

20 HEARING OFFICER VALKOSKY: Are you going  
21 to do, per topic, are you going to do both direct  
22 and the cross?

23 MS. MINOR: Yes, if you'd like me to do  
24 that.

25 HEARING OFFICER VALKOSKY: Yes.

1 MS. MINOR: And then in terms of cross-  
2 examination, and this is cross-examination of  
3 other parties' witnesses, why don't we say two  
4 hours.

5 HEARING OFFICER VALKOSKY: Okay.

6 MS. MINOR: Traffic and transportation.  
7 I would split that time, one hour for direct, and  
8 move over two hours for cross.

9 Facility design, Mirant has filed an  
10 application that has what ISO has identified  
11 potentially as common modes of failure. There are  
12 ongoing discussions between the CEC Staff, Mirant  
13 and ISO to eliminate those common modes of  
14 failure.

15 We think it would be extremely helpful  
16 before these hearings were to proceed if Mirant  
17 amended its application to in fact incorporate the  
18 changes that it indicates, I think, tonight that  
19 it is willing to make, and that it's talking to  
20 ISO about.

21 That way it's clear to all the parties  
22 whether the common modes of failure have been  
23 eliminated, and certainly would avoid the City  
24 having to have witnesses testify on those topics,  
25 and would avoid cross-examination on those topics.

1 HEARING OFFICER VALKOSKY: Okay, well,  
2 but you agree that is potentially a hearing topic,  
3 I take it?

4 MS. MINOR: Yes.

5 HEARING OFFICER VALKOSKY: Now, if, for  
6 example, we went to a staggered filing, applicant  
7 filing first, we heard Mr. Harrer say that that  
8 will be addressed in their testimony. You would  
9 know at that point, would you not?

10 MS. MINOR: That's right, if in fact  
11 there were staggered testimony --

12 HEARING OFFICER VALKOSKY: Yeah, okay.

13 MS. MINOR: Okay. Assuming that the  
14 application is the application that we are aware  
15 of today, which is with the potentially identified  
16 common modes of failure, for facility design we  
17 can reduce that to two hours on direct and move  
18 over the two hours to cross-examination.

19 Power plant efficiency, we can say 30  
20 minutes on direct; and two hours on cross. Power  
21 plant reliability, one hour for direct; and three  
22 hours for cross.

23 Water and soils, the City has identified  
24 three witnesses, all of whom are external experts  
25 to the City. And we expect that their direct

1 would take 30 minutes each, so that's 90 minutes.  
2 We have a potentially unidentified witness in the  
3 event that there are some issues that we do not  
4 anticipate. And then cross-examination of those  
5 witnesses is very much unknown, and if we have to  
6 guess, why don't we say two hours for the time  
7 being.

8 Waste management, again the City has  
9 identified three witnesses that are outside  
10 experts. For direct let's do 30 minutes each, 90  
11 minutes on direct. And then cross-examination I  
12 think we can get that one probably down to two  
13 hours.

14 Hazardous materials management. We have  
15 identified three issues, and the issues relate  
16 specifically to hazardous materials management,  
17 but also to environmental justice issues. And so  
18 we would allocate an hour for the environmental  
19 justice witness, and 30 minutes for the direct for  
20 the other two witnesses.

21 HEARING OFFICER VALKOSKY: Could you  
22 just put the environmental justice witness in  
23 socioeconomics, which is the broad topic under  
24 which we consider environmental justice?

25 MS. MINOR: We can do that for purposes

1 of tracking. We actually probably would prefer to  
2 have each -- I think the important issue is that  
3 environmental justice overlaps on a number of the  
4 categories, and we're trying to reflect the  
5 environmental justice witness in the category.

6 If you wanted to stick that one hour  
7 over in socioeconomics for tonight's purposes,  
8 that's fine.

9 HEARING OFFICER VALKOSKY: Okay, and  
10 which witness would that be, again, just for my  
11 information?

12 MS. MINOR: It's Gene Coyle, C-o-y-l-e;  
13 it's misspelled.

14 HEARING OFFICER VALKOSKY: C-o-y-l-e,  
15 okay. I notice you have -- I'm sorry, never mind.

16 MR. RATLIFF: Mr. Valkosky, if I may, I  
17 just would like to interject in staff's view we  
18 would support the idea if the environmental  
19 justice witnesses would testify in the topic area  
20 where the party believes there's an environmental  
21 justice issue, rather than tossing them into the  
22 grab-bag of socioeconomics, where we're trying to  
23 unload that area from --

24 HEARING OFFICER VALKOSKY: Okay, well,  
25 thank you for that option. We're just exploring,



1 the Committee's just trying to gain information on  
2 what it's facing, that's all.

3 Okay, so --

4 MS. MINOR: I actually stand corrected.  
5 Cohn was a witness, I think it's Sue Cohn, and  
6 you're correct to have it there. That should be  
7 30 minutes for each of those witnesses; and that  
8 would be 90 minutes total --

9 HEARING OFFICER VALKOSKY: Ninety  
10 minutes, okay.

11 MS. MINOR: -- for direct. And then on  
12 cross-examination let's say an hour and a half.

13 Transmission line safety, the City did  
14 not designate a witness. Transmission system  
15 engineering, -- and we would not have, we probably  
16 would not have cross-examination.

17 Transmission system engineering, we  
18 designated two witnesses. Let's say 30 minutes  
19 each. Total of 60 minutes. And then on cross for  
20 the City, let's say one hour.

21 Local system effects, two hours for the  
22 City's witness, and on cross-examination this is a  
23 big unknown for us, but I would estimate probably  
24 four hours.

25 Aquatic biology and cooling options.

1 The City has designated five witnesses and an  
2 unidentified witness. This is a huge topic area.  
3 For the direct testimony we, for purposes of this  
4 evening's estimating, we can get this down to --  
5 this is hard work -- let's say three hours.  
6 Cross-examination is completely unknown for me. I  
7 need to see their testimony. And if you force me  
8 to guess tonight, I'll guess.

9 HEARING OFFICER VALKOSKY: You've got to  
10 guess.

11 (Laughter.)

12 MS. MINOR: Okay. If I have to guess,  
13 I'd say two days.

14 HEARING OFFICER VALKOSKY: Two days for  
15 cross-examination?

16 MS. MINOR: Yes.

17 HEARING OFFICER VALKOSKY: Okay, I  
18 understand it's a guess.

19 MS. MINOR: Okay. And these are all the  
20 parties cross-examining the City's witnesses.

21 HEARING OFFICER VALKOSKY: No, in your  
22 case it's the City cross-examining all the  
23 parties' witnesses.

24 MS. MINOR: Yeah, exactly, I'm sorry.  
25 It's late. But that's what I meant.

1 HEARING OFFICER VALKOSKY: Okay.

2 MS. MINOR: Noise, 30 minutes. And  
3 cross-examination 30 minutes. Visual resources,  
4 15 minutes assuming that this does not relate to  
5 cooling options, 15 minutes for direct. And  
6 cross-examination 15 minutes.

7 Land use, we have listed five potential  
8 witnesses. Let's say 15 minutes each. And then  
9 for cross-examination, two hours.

10 Air quality, an hour each, so that's two  
11 hours. Cross-examination probably four hours.  
12 Public health, three hours, and cross-examination  
13 six hours, four hours, we can go with four.

14 Socioeconomic resources, again assuming  
15 that this category is not a catch-all for other  
16 topics where there are EJ issues, we would say the  
17 direct would be 30 minutes; and the cross would be  
18 two hours.

19 Alternatives, the City includes in  
20 alternatives the City's energy plan; it's  
21 designated on our issues matrix. And so we would  
22 include for direct testimony three hours. And for  
23 cross-examination, completely unknown, but six  
24 hours.

25 HEARING OFFICER VALKOSKY: I've just got

1 a couple of questions based on --

2 MS. MINOR: Okay.

3 HEARING OFFICER VALKOSKY: -- your -- I  
4 understand staff believes they've supplied you  
5 with the information you indicated as missing, is  
6 that correct?

7 MS. MINOR: I received it via email  
8 today.

9 HEARING OFFICER VALKOSKY: Great, so  
10 it's no longer a problem.

11 MS. MINOR: Well, except I haven't had a  
12 chance to review it for adequacy, but I did  
13 receive an email today.

14 HEARING OFFICER VALKOSKY: But you got  
15 it, okay. Can you tell the Committee just briefly  
16 what is the status of the San Francisco energy  
17 plan and when it will be adopted, or when the  
18 board of supervisors will consider it?

19 MS. MINOR: The plan is still in draft  
20 format. I have Ed Smelloff here, who is  
21 responsible with the Department for the  
22 environment in the City, drafting the plan. But  
23 the current timeline is for the plan to be  
24 submitted to the board of supervisors on June 3rd.

25 HEARING OFFICER VALKOSKY: Okay, and by

1 submitting, they will then act on it on June 3rd?  
2 Or is it possible they will review it, deliberate  
3 upon it, and not act till --

4 MS. MINOR: Once it's submitted to the  
5 board of supervisors, then it would be subject to  
6 the board's legislative process, which means that  
7 it would be introduced at a board meeting on or  
8 about June 3rd. It would then be assigned by the  
9 president of the board to a committee. There  
10 would be public hearings, and then it would come  
11 back to the entire board for recommendation,  
12 consideration, and/or action.

13 HEARING OFFICER VALKOSKY: And a rough  
14 guesstimate as to how long that process, the  
15 legislative process takes?

16 MS. MINOR: If it were to proceed  
17 without delays the process is roughly 60 days.

18 HEARING OFFICER VALKOSKY: Okay. So, it  
19 will be a minimum of 60 days, is that fair to say?

20 MS. MINOR: Yeah, it could potentially  
21 be expedited. If, for example, the board were to  
22 consider it as a committee of the whole, so that  
23 it would not have to be referred to a board  
24 committee, the process could be shortened. But 60  
25 days is probably a good guess for this kind of

1 legislative action.

2 HEARING OFFICER VALKOSKY: Okay, good.

3 No, I appreciate that. You raise as one of your  
4 concerns the shutdown of Hunter's Point. And I  
5 understand the City's view of that as an issue.

6 But, you're not suggesting, are you,  
7 that that's an evidentiary issue that we should  
8 consider in this case? You list that as one of  
9 the four major concerns, I believe.

10 MS. MINOR: Witnesses testifying on  
11 behalf of the City certainly will refer to the  
12 shutdown of Hunter's Point during their direct  
13 testimony.

14 HEARING OFFICER VALKOSKY: Okay, but,  
15 again, I mean you understand, and correct me if  
16 I'm wrong, one, the applicant does not own the  
17 Hunter's Point plant? And two, I believe -- well,  
18 I can't think of the name of the bill, but I  
19 believe it has to be operated until at least '06.

20 So, again, are you raising that as  
21 argument, or are you attempting to make that a  
22 factual issue for consideration by this Committee?

23 MS. MINOR: In various, in our  
24 testimony, for an example, in our local system  
25 effects testimony and our alternatives testimony,

1       when the City looked at its energy plan, the  
2       shutdown of Hunter's Point is a critical part of  
3       that energy plan.

4               And so we believe looking at this entire  
5       process kind of organically, not linearly, we  
6       understand that Mirant does not own the Hunter's  
7       Point power plant; that the shutdown is important.  
8       We will have witnesses that will talk about the  
9       shutdown of Hunter's Point, and how that shutdown  
10      is implicated by the local systems effect  
11      analysis, as well as the alternatives analysis.

12              HEARING OFFICER VALKOSKY:  Okay for now.  
13      Also, you raise, I believe, a quote, and I'm just  
14      paraphrasing, "a guarantee to build by Mirant," to  
15      build Potrero, should it be certified.

16              Now, I understand as a policy issue, as  
17      an argument, I assume you're not going to raise  
18      that as some sort of factual evidentiary issue, or  
19      are you?

20              MS. MINOR:  I'm sorry, I didn't hear  
21      what quote you said you were referring to?

22              HEARING OFFICER VALKOSKY:  Again, I'm  
23      paraphrasing.  In your prehearing conference  
24      statement you raised that one of the City's issues  
25      is that there is no guarantee, and that's my

1       paraphrase, by Mirant to build the plant should it  
2       be certified.

3               Okay, now, are you intending to raise  
4       that as an evidentiary issue, or, you know, it's  
5       certainly a valid point of argument or policy.

6               MS. MINOR:  It is certainly part -- it  
7       will be part of our alternatives analysis.  The  
8       question of whether the unit 7 will be built even  
9       if it is certified, and the impact that that  
10      uncertainty has on consideration of alternatives.

11              HEARING OFFICER VALKOSKY:  Well, again,  
12      I think, that may be addressed in an order, and  
13      again, you have the right to make that argument.  
14      I just need some convincing that it's actually a  
15      factual issue that the Committee could hear.

16              Next, am I misunderstanding, I believe  
17      it's in your aquatic biology portion, that you  
18      seem to be contesting BCDC's mitigation for wharf  
19      five, is that correct or not?  BCDC imposed a  
20      certain dollar amount, whatever it was, for  
21      mitigation.  Am I to read your statement that you  
22      are in disagreement with that dollar amount?

23              MS. MINOR:  We think it's inadequate,  
24      yes.

25              HEARING OFFICER VALKOSKY:  Did you raise



1       that before BCDC?

2               MS. MINOR:   Yes.

3               HEARING OFFICER VALKOSKY:   What do you  
4       expect the Commission to do about it, this  
5       Commission?

6               MS. MINOR:   Well, part of the  
7       consideration of the adequacy of the mitigation is  
8       their entire package, and so we wanted to raise  
9       before this Commission the fact that although  
10      mitigation had been awarded, that the analysis  
11      that BCDC did was inadequate in that what BCDC  
12      sought to do, which was to compensate for the  
13      removal of wharf five, which was the mitigation  
14      they proposed, did not cover the entire cost of  
15      removal of wharf five.

16              HEARING OFFICER VALKOSKY:   Okay, so it  
17      would not be that you're contesting the  
18      feasibility or contesting that BCDC's mitigation  
19      would create greater impacts; you would be  
20      attempting to convince the Committee to, on its  
21      own authority, order more mitigation?

22              MS. MINOR:   That's correct.

23              HEARING OFFICER VALKOSKY:   Okay.

24              MS. MINOR:   More dollar amount.

25              HEARING OFFICER VALKOSKY:   Thank yo.

1 MS. MINOR: Not a different type.

2 HEARING OFFICER VALKOSKY: Thank you.

3 In your hazmat capsule, as I read it there was a  
4 reference to SCONOx. SCONOx is typically an air  
5 quality issue when it's reviewed by the District  
6 and everything else. Just wondering why it's in  
7 hazmat? I understand no ammonia would be used  
8 were SCONOx used, but as far as I can see the  
9 SCONOx, at least based on the District and  
10 everything else, SCONOx is just not an option. So  
11 why are we even bringing that up in hazmat?

12 MS. MINOR: Again, in this document we  
13 attempted to anticipate issues without having  
14 Mirant's proposed testimony in front of us.

15 Doing workshops conducted by the CEC,  
16 there was fairly extensive discussion of SCONOx as  
17 a part of the hazardous materials management  
18 section. Because it's a way to potentially  
19 eliminate some of the ammonia that is needed, that  
20 will be brought through the community.

21 HEARING OFFICER VALKOSKY: Right, but  
22 are you going --

23 MS. MINOR: So that's why it's here.

24 HEARING OFFICER VALKOSKY: -- are you  
25 going to be trying -- are you going to be trying

1 to make the case that SCONOX should be used?

2 Because if you are, that's fundamentally, I think,  
3 an air quality issue.

4 MS. MINOR: As we sit here tonight, we  
5 have not written this testimony. And we wanted to  
6 alert you to all potential issues. But, as the  
7 testimony is formulated, some of those issues may  
8 be narrowed or eliminated.

9 HEARING OFFICER VALKOSKY: Okay. Thank  
10 you. Last question, regarding waste management,  
11 I'm unclear. Your waste management starts off  
12 saying that there are certain legal obligations,  
13 remediation and things that PG&E has, and then  
14 there was a large list of other possible issues.

15 I'm unclear if these are related to  
16 applicant's potential obligations, or if these  
17 somehow derive from PG&E's obligations.

18 MS. MINOR: The City -- we were  
19 attempting to try to anticipate Mirant's position  
20 vis-a-vis one of the conditions of certification.  
21 One of the conditions of certification required  
22 that, and I'm paraphrasing, it's not right in  
23 front of me, required that in the event PG&E, for  
24 some reason, was not able to fulfill its  
25 contractual and legal obligations to mitigate the

1 site, that that would be the responsibility of  
2 Mirant.

3 And I may have very poorly paraphrased  
4 that condition of certification. But I do believe  
5 that I've got it roughly correct.

6 We were not clear what position Mirant  
7 would take vis-a-vis that condition of  
8 certification, and so we thought it was best to  
9 try to raise a host of potential issues in that  
10 section that, in fact, may be issues if Mirant  
11 raised significant concerns with that condition of  
12 certification.

13 HEARING OFFICER VALKOSKY: Okay. And my  
14 understanding, and, Mr. Carroll, check me if I'm  
15 wrong, but Mirant has not raised any significant  
16 concerns with waste management conditions of  
17 certification as proposed by staff, is that  
18 correct? Or not? I mean, tell me if it's not  
19 correct, that's okay.

20 MR. CARROLL: That's not correct.

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. CARROLL: We are opposed to that  
23 condition of certification.

24 HEARING OFFICER VALKOSKY: You are  
25 opposed to that condition, okay. Fine, thank you.

1 Appreciate that.

2 Okay, anything else, Ms. Minor, that you  
3 want to add?

4 MS. MINOR: Did I say I'm usually asleep  
5 by 9:45?

6 (Laughter.)

7 HEARING OFFICER VALKOSKY: Commissioner  
8 Pernell is just getting his second wind now.

9 (Laughter.)

10 MR. CARROLL: I was.

11 (Laughter.)

12 MS. MINOR: I think the only thing that  
13 we haven't talked about specifically that's kind  
14 of weaved through the City's comments are really  
15 compliance with the City's ordinance enacted by  
16 the board of supervisors related to the siting of  
17 power plants.

18 And obviously that's the standard that's  
19 been set for the City. It will get reflected in  
20 many of these categories. And I think our issues  
21 analysis reflects the fact that we are comparing  
22 Mirant's compliance with this ordinance.

23 And as various agreements go to the  
24 board of supervisors for approval, obviously those  
25 agreements would be subjected to a review and

1 analysis vis-a-vis the City's ordinance.

2 HEARING OFFICER VALKOSKY: Right. And I  
3 appreciate that, because that certainly reflects  
4 the reality of what is going to happen at the City  
5 level.

6 But I guess would you agree with staff's  
7 characterization of the Maxwell ordinances as  
8 essentially a directive to City departments?

9 MS. MINOR: We do not object to that  
10 characterization.

11 HEARING OFFICER VALKOSKY: Okay. No,  
12 and again I appreciate your intention to reflect  
13 the reality of it on there. Thank you.

14 Ms. Simon.

15 MS. SIMON: Thank you.

16 HEARING OFFICER VALKOSKY: Corrections  
17 first.

18 MS. SIMON: I don't believe there are  
19 any corrections, but I would want to actually sit  
20 down in the office and double check, but my  
21 initial reading is that everything is as we said  
22 in the prehearing conference statement.

23 HEARING OFFICER VALKOSKY: Okay, I have  
24 a question for you. Both you and Mr. Ramo, in at  
25 least the topic of, well, specifically the topic

1 of aquatic biology both identify Messrs. Schlissel  
2 and Keith.

3 MS. SIMON: Yes, we are intending to  
4 present them together.

5 HEARING OFFICER VALKOSKY: Okay.

6 MS. SIMON: And to present Dr. Kyle,  
7 together.

8 HEARING OFFICER VALKOSKY: Okay. So, --

9 MS. SIMON: We had a variation in how we  
10 identified their testimony in relation to  
11 technical areas. I identified all technical areas  
12 that it looked like that set of testimony might  
13 apply to, but the intention is that all three of  
14 our parties are presenting the same thing.

15 HEARING OFFICER VALKOSKY: Right, yeah,  
16 and so that's a jointly sponsored witness or  
17 witnesses.

18 MS. SIMON: Yes.

19 HEARING OFFICER VALKOSKY: Fine. Thank  
20 you. Okay, I'm sorry, go ahead, please.

21 MS. SIMON: If I might ask a question.  
22 I prepared our prehearing conference statement on  
23 the assumption that what the Committee would  
24 expect is that witnesses would adopt their written  
25 testimony with a brief summary, and then be

1 available for cross-examination.

2 HEARING OFFICER VALKOSKY: That is the  
3 typical procedure, yes, it is.

4 MS. SIMON: But listening to people this  
5 evening I'm getting the impression that at least  
6 some other parties are expecting that their  
7 witnesses might expatiate somewhat longer.

8 And I would not wish to put CBE's  
9 witnesses at a kind of comparative disadvantage by  
10 their oral presentation being significantly  
11 shorter, since even though the written testimony  
12 is available, we are affected by what we hear.

13 And so I'm wondering whether the  
14 Committee really is intending to have a uniform  
15 expectation or whether, you know, there really as  
16 much leeway as people's representations tonight  
17 suggest in the presentation of the direct  
18 testimony.

19 HEARING OFFICER VALKOSKY: The Committee  
20 would like to get something more uniform, while at  
21 the same time not wanting to prevent a party from  
22 giving a good summary of its testimony, okay.

23 MS. SIMON: Okay.

24 HEARING OFFICER VALKOSKY: That's now,  
25 for example, and I'm not picking on Mr. Ratliff,



1 but I will, you know, he thinks he can do it in  
2 ten minutes. Okay. I mean that's fine.

3 If, on the same topic, you, for example,  
4 thought you needed 30 because you wanted to go  
5 into it a little more, that's fine, too.

6 Now, you know, I think again the  
7 Committee is just trying to gain information. If,  
8 for example, you wanted eight hours to present  
9 your direct, well, again, that's just not going to  
10 happen, okay.

11 So, we're trying to -- the Committee  
12 will ultimately, and again I don't know what, if  
13 any, of these topics will go to hearing in the  
14 short term, but try to set some reasonable bounds  
15 which hopefully will be fair to all the parties.  
16 Okay.

17 MS. SIMON: Okay, thank you.

18 HEARING OFFICER VALKOSKY: And that's  
19 really the best I can answer at this time.

20 On your prehearing conference statement  
21 are you challenging the Air District's process  
22 that it used in developing its FDOC?

23 MS. SIMON: Yes.

24 HEARING OFFICER VALKOSKY: You are.  
25 Okay. Specifically.

1 MS. SIMON: Yes, with the CBE submitted  
2 comments directly to the Air District on the  
3 preliminary determination of compliance.

4 HEARING OFFICER VALKOSKY: Okay.

5 MS. SIMON: We are not satisfied with  
6 the outcome, and, yes, we are.

7 HEARING OFFICER VALKOSKY: So, but again  
8 is it the analytical results or the process which  
9 they went through?

10 MS. SIMON: Both.

11 HEARING OFFICER VALKOSKY: Both, okay.  
12 And how about BCDC specifically regarding its  
13 access proposals? Does CBE basically agree or  
14 disagree with those?

15 MS. SIMON: CBE does not intend to  
16 cross-examine BCDC witness if one is sponsored.

17 HEARING OFFICER VALKOSKY: Okay.

18 MS. SIMON: We are currently intending  
19 to put on a witness of our own to sort of expand  
20 on the public access issues from the point of view  
21 of the public.

22 HEARING OFFICER VALKOSKY: Okay, and --  
23 all right, and that would be the ones identified  
24 under land use, correct?

25 MS. SIMON: Yes.

1 HEARING OFFICER VALKOSKY: Yeah. Okay.

2 Oh, the nature of your cross-examination on  
3 transmission line safety and nuisance.

4 MS. SIMON: Yes.

5 HEARING OFFICER VALKOSKY: Are you  
6 basically suggesting, or going to suggest there's  
7 new evidence or new legal requirements? Or are  
8 you just really going to restrict it to  
9 questioning the accuracy of staff's analysis?

10 MS. SIMON: The latter.

11 HEARING OFFICER VALKOSKY: The latter,  
12 okay. Final question, simultaneous or staggered  
13 filing?

14 MS. SIMON: The staggered filing; I  
15 think echoing what the City said, I think it would  
16 make for much more efficient testimony, and may  
17 also eliminate the need for at least some  
18 consideration of the possibility of rebuttal  
19 witnesses, which otherwise I think could be a  
20 serious issue.

21 HEARING OFFICER VALKOSKY: I think  
22 you're right. Okay, anything else you'd like to  
23 add?

24 MS. SIMON: I did want to say in  
25 relation to the time estimates for cross-

1 examination, which are, as everyone else, you  
2 know, has pointed out, --

3 HEARING OFFICER VALKOSKY: Great.

4 MS. SIMON: -- kind of just guesses that  
5 CBE would anticipate that we would not repeat or  
6 duplicate questions or topics that had been  
7 previously addressed. We did our time estimates  
8 without -- on the assumption that no one else was  
9 going to ask any of our questions.

10 So I would assume that if the order at  
11 the hearing is the same as the order with which  
12 you've been going through the parties tonight, we  
13 might drop off some of the time because we would  
14 be second among the intervenors.

15 But at this point I'm not prepared to  
16 make any firmer estimate of that.

17 HEARING OFFICER VALKOSKY: Okay, no,  
18 that's fair.

19 PRESIDING MEMBER PERNELL: I appreciate  
20 that.

21 HEARING OFFICER VALKOSKY: Mr. Ramo.

22 MR. RAMO: Yes.

23 HEARING OFFICER VALKOSKY: Any  
24 corrections, other than the ones that Ms. Simon  
25 just clarified? The clarification she brought up

1 about the joint witnesses, jointly sponsored  
2 witnesses.

3 MR. RAMO: There's a few blanks I'd like  
4 to fill in.

5 HEARING OFFICER VALKOSKY: Sure.

6 MR. RAMO: Page 2, under facility  
7 design, we have a witness Garbesi.

8 HEARING OFFICER VALKOSKY: Um-hum.

9 MR. RAMO: And I'm going to estimate 20  
10 minutes.

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. RAMO: But let me raise one point  
13 and if you notice he's also under number 10, power  
14 plant reliability.

15 HEARING OFFICER VALKOSKY: Right.

16 MR. RAMO: And I put the same time, but  
17 there's certain witnesses whose testimony touches  
18 on various issues, so it would probably be more  
19 efficient to do it in an integrated fashion. I  
20 hope when we come to the hearing there might be  
21 some opportunity to make those kinds of  
22 suggestions.

23 So, for example, if Garbesi was  
24 testifying and allowed to put out her testimony on  
25 design and power plant reliability, maybe we'd get

1 the whole thing done in 20 minutes, rather than  
2 two separate ones.

3 It's especially also important for our  
4 out-of-state witnesses, which is the Schlissel,  
5 Keith, where the thrust of their testimony has to  
6 do with cooling water options, even though that  
7 touches on noise and visual resources. And it may  
8 be more efficient to just have their testimony on  
9 the basic subject with those topics included.  
10 Just a suggestion.

11 HEARING OFFICER VALKOSKY: Thank you, I  
12 appreciate it.

13 MR. RAMO: Let's see, on page 3 under  
14 aquatic biology, Schlissel for both of us. Ms.  
15 Simon indicated that will be a joint witness and  
16 the time is fine.

17 Under noise, number 18, again Schlissel  
18 and Keith are joint witnesses. On page 4, number  
19 19, visual resources again, just noting that they  
20 are joint witnesses, Schlissel and Keith are joint  
21 witnesses with CBE.

22 Under 21, again Kyle will be a joint  
23 witness; and I think she, at least, needs  
24 approximately 15 to 20 minutes. I'm not sure how  
25 that affects the -- estimate, but it might be more

1 realistic to say 45 minutes for all of them.

2 Number 22 in public health, again Kyle  
3 is a joint witness. She's listed with CBE alone,  
4 and I think with Hilton Nikeris, the more  
5 realistic assessment would be 45 minutes. And  
6 cross-examination I'll put two hours.

7 I believe that's it for corrections  
8 unless I've missed --

9 HEARING OFFICER VALKOSKY: Okay, no, I  
10 think -- well, I may be missing -- so, you know,  
11 I'm not going to go any further.

12 Okay, if you could explain your client's  
13 position on the public access options developed by  
14 BCDC. I mean are you disputing them, or are you  
15 just urging the Commission to adopt the  
16 recommendations in appropriate conditions of  
17 certification?

18 MR. RAMO: We are not challenging it.  
19 We're urging consistency with BCDC.

20 HEARING OFFICER VALKOSKY: Good. And  
21 are you joining CBE in challenging the District's  
22 process in developing its FDOC?

23 MR. RAMO: Yes.

24 HEARING OFFICER VALKOSKY: Are you  
25 raising closure of Hunter's Point as an

1       evidentiary issue, because again at least a  
2       mention of that was in your prehearing conference  
3       statement?

4               MR. RAMO:  As an evidentiary --

5               HEARING OFFICER VALKOSKY:  And again I  
6       should --

7               MR. RAMO:  -- to a certain extent, to  
8       the extent that the testimony in local system  
9       effects and alternatives and facility design  
10      reliability refer to those issues, we have a  
11      dispute regarding that.

12              I think the way we look at it is that  
13      before the Commission from a number of parties  
14      from different perspectives are questions about  
15      the role of third parties.  The City of San  
16      Francisco in relation to cooling system.  The ISO  
17      in relation to local system effects and the common  
18      fault design.

19              So, while we agree that Mirant doesn't  
20      own Hunter's Point, we think you have the  
21      authority in assessing various issues that have  
22      been brought before you by various parties.  
23      Whether this facility should go ahead regardless  
24      of what these other parties are doing.  And I  
25      think that's been raised in various respects.



1           So, to that extent there's a legal issue  
2       in terms of the factual issues, only to the extent  
3       that testimony's brought it up do we plan to --

4           HEARING OFFICER VALKOSKY:   Okay, yeah,  
5       and certainly there are legal and policy issues.  
6       And, you know, that's free to address those in  
7       briefs and other nonevidentiary presentations.

8           So I interpret what you've said is that  
9       you're not bringing it up.

10          MR. RAMO:   No, that isn't what I --

11          HEARING OFFICER VALKOSKY:   No?   Okay.

12          MR. RAMO:   -- for example, in local  
13       systems effects the staff said we don't think it's  
14       likely, or we don't think it's guaranteed that the  
15       ISO will allow the shutdown of Hunter's Point if  
16       this project is built.

17          That's a factual assertion --

18          HEARING OFFICER VALKOSKY:   I see --  
19       correct, yeah.

20          MR. RAMO:   -- and we have a right to  
21       contest it, dispute it and put on our own  
22       testimony regarding that issue, to the extent that  
23       that's relied upon in the analysis.

24          HEARING OFFICER VALKOSKY:   Okay, thank  
25       you for that clarification, appreciate it.

1 Staggered or simultaneous filings?

2 MR. RAMO: Staggered. I think that  
3 helps mitigate the common fault problem. In terms  
4 of the testimony, not in terms of the engineering  
5 design.

6 (Laughter.)

7 PRESIDING MEMBER PERNELL: Good  
8 clarification.

9 HEARING OFFICER VALKOSKY: Thank you.  
10 Potrero Boosters.

11 MR. BOSS: Yes. No corrections.

12 HEARING OFFICER VALKOSKY: Okay. You  
13 mean I got it all right?

14 MR. BOSS: No, we got it all right.

15 HEARING OFFICER VALKOSKY: Okay, that's  
16 good.

17 (Laughter.)

18 HEARING OFFICER VALKOSKY: Somebody must  
19 have had a good day that day. And actually, the  
20 only question I've got for you is staggered or  
21 simultaneous filing?

22 MR. BOSS: Staggered.

23 HEARING OFFICER VALKOSKY: Ms. Cho, last  
24 but not least, welcome to your first Energy  
25 Commission hearing.

1 MS. CHO: We just want to add number 10,  
2 power plant reliability, 15 minutes for cross.

3 HEARING OFFICER VALKOSKY: Okay.

4 MS. CHO: On page 4, land use, so 15  
5 minutes for cross. And then 23, socioeconomic  
6 impacts, our direct testimony will be  
7 approximately 15 minutes.

8 HEARING OFFICER VALKOSKY: All right.  
9 Anything else you'd like to add? No, thank you.

10 Okay, Mr. Ramo, under reliability I see  
11 an unfilled parenthesis for cross.

12 MR. RAMO: Oh, one hour for cross.

13 HEARING OFFICER VALKOSKY: One hour.  
14 Thank you, sir.

15 Oh, the Neighboring Property Owners, do  
16 you disagree with the BCDC access options or --

17 MS. CHO: No. We support that option,  
18 we just want to make sure that the park is  
19 properly maintained in the long term, because that  
20 does directly impact our property.

21 HEARING OFFICER VALKOSKY: So, then --

22 MS. CHO: So we would like to see some  
23 more mitigations with regard to long-term  
24 maintenance of that park.

25 HEARING OFFICER VALKOSKY: Okay, and I

1       assume you would also like to see those reflected  
2       in conditions of certification in the decision?

3               MS. CHO: Right.

4               HEARING OFFICER VALKOSKY: Thank you.

5               MR. CARROLL: May I ask a point of  
6       clarification?

7               HEARING OFFICER VALKOSKY: Certainly.

8               MR. CARROLL: At some point it would be  
9       helpful to us to understand exactly who the  
10      members are of the Neighboring Property Owners,  
11      because for example, the BCDC park proposal is a  
12      considerable distance away from where we thought  
13      the Neighboring Property Owners' properties were.

14              In other words, the proposal is not to  
15      put the park along 23rd Street any longer, so that  
16      last statement sort of confused me, because I  
17      thought I sort of had a handle on who the  
18      neighboring property owners were, although not a  
19      very clear handle. Now I don't feel like I have  
20      any handle at all on it.

21              HEARING OFFICER VALKOSKY: Okay, can  
22      you --

23              MS. LONDON: I'm coming up to clarify.

24              HEARING OFFICER VALKOSKY: Okay, Ms.  
25      London.

1 MS. LONDON: If I can clarify. I  
2 believe that --

3 PRESIDING MEMBER PERNELL: We're going  
4 to need your name for the record.

5 MS. LONDON: I'm Jody London on behalf  
6 of the Neighboring Property Owners Coalition. And  
7 I think that the issue around the park is that  
8 BCDC considered several options for public access.  
9 And if, for some reason, the Energy Commission did  
10 not adopt the recommendation from BCDC but went to  
11 one of the other options that BCDC considered,  
12 which includes this funny little park on the other  
13 side of our clients' property, that we would then  
14 want the conditions that Ms. Cho described to you.

15 HEARING OFFICER VALKOSKY: Okay, does  
16 that clarify it?

17 MR. CARROLL: Yes, that clarifies that  
18 issue. I guess I would --

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. CARROLL: -- restate the general  
21 comment, though, it would be very helpful, I  
22 think, for all the parties to know who these  
23 neighborhood property owners are, because it's  
24 very difficult for us to anticipate what their  
25 concerns and issues are if we don't know who they

1 are.

2 HEARING OFFICER VALKOSKY: Okay, is  
3 there any difficulty with you two exchanging  
4 information off the record so we can --

5 MS. LONDON: That's fine. And I believe  
6 we also identified them in our notice, motion to  
7 intervene.

8 HEARING OFFICER VALKOSKY: Yeah, so you  
9 can have this discussion. The Committee assumes  
10 that it will take place.

11 Has anybody got --

12 MS. LONDON: There was one question you  
13 didn't ask us, which is which form of testimony --

14 HEARING OFFICER VALKOSKY: I'm sorry,  
15 you're right, I didn't.

16 MS. LONDON: We preferred the staggered  
17 testimony.

18 HEARING OFFICER VALKOSKY: Staggered  
19 testimony. Somehow I could have anticipated that.  
20 Is there --

21 MS. LONDON: I know.

22 HEARING OFFICER VALKOSKY: Is there  
23 anything else in this part of the prehearing  
24 conference that anybody wants to raise?

25 Mr. Carroll.

1           MR. CARROLL: Well, I don't know if you  
2           were getting to exhibits or not, but we did have  
3           an issue we wanted to raise with respect to  
4           exhibits.

5           HEARING OFFICER VALKOSKY: Sure, go  
6           ahead.

7           MR. CARROLL: The order required the  
8           prehearing conference statements required that  
9           exhibits be identified and, in fact, that copies  
10          be provided. I think for the most part, because  
11          the parties realize that the documents were either  
12          in the docket or generally available, most of the  
13          parties did not provide copies. And I think  
14          that's fine, --

15          HEARING OFFICER VALKOSKY: Right.

16          MR. CARROLL: -- however some of the  
17          parties did not identify with any specificity at  
18          all what the exhibits are that they intend to  
19          introduce.

20          HEARING OFFICER VALKOSKY: That's  
21          understood, and the way we do it is -- you're  
22          correct on the docketed materials, everyone has  
23          access to the docket. If there's any real  
24          difficulty in obtaining that, you know, staff or  
25          the Public Adviser can certainly assist you.

1           Insofar as exhibits are relevant to the  
2 testimony, when you submit your prepared testimony  
3 that has to be accompanied by undocketed materials  
4 that you're going to offer as exhibits. That's  
5 what it is.

6           MR. CARROLL: Okay, so the deadline for  
7 submitting exhibits will be with the direct  
8 testimony?

9           HEARING OFFICER VALKOSKY: With the  
10 testimony. That will be part and parcel of the  
11 direct testimony, yes.

12           And there is an additional burden on the  
13 parties, and that is for the sanctity of the  
14 record I've got to have a clean original copy of  
15 these so we can put them in our docket unit.  
16 Okay? Of all the exhibits that the parties are  
17 going to submit.

18           Okay, anything else?

19           PRESIDING MEMBER PERNELL: All right,  
20 we're going to go to public testimony. Before we  
21 do that, though, let me just say for the  
22 applicant, staff and intervenors, we appreciate  
23 your patience.

24           And I think Ms. Simon has stated it  
25 correctly that we don't want to be redundant when



1 we're doing either your direct or your cross. And  
2 we don't want to badger anybody's witness. So I  
3 think we're all professionals and we can get  
4 through this.

5 And as Ms. Simon has said, as time goes  
6 on, some of the questions have already been  
7 answered, then there's no need to ask them.

8 So we think, with your patience, we can  
9 get through this process. And with that, we have  
10 our Public Adviser, Ms. Mendonca, --

11 MS. MENDONCA: I've been turning in blue  
12 cards all evening, I don't know, to Mr. Valkosky.

13 PRESIDING MEMBER PERNELL: Yeah, we have  
14 blue cards. I don't know who all -- I don't know  
15 who's left, but we can certainly -- we're going to  
16 docket the cards for the record whether they're  
17 here or not.

18 HEARING OFFICER VALKOSKY: Yeah, all --  
19 they have comments on them, for the most part.

20 PRESIDING MEMBER PERNELL: Let me just  
21 ask, is there anyone who wants to address the  
22 Committee?

23 MS. MENDONCA: I have some cards that  
24 were submitted, people that were not able to stay.  
25 I believe the cards that were turned in earlier

1       were people that thought they would be called  
2       upon, so I'm not sure how complete.

3               I do have some cards that people told me  
4       they could not stay. So, this one is from -- I  
5       believe there's still several people, they turned  
6       in cards --

7               PRESIDING MEMBER PERNELL: Okay, why  
8       don't you read what you have into the record. And  
9       then those that want to address the Committee will  
10      be allowed to do so.

11              MS. MENDONCA: Okay, David Freeberg,  
12      F-e-r-b-e-r-g. I participated in a great  
13      community energy workshop to construct an  
14      alternative City energy plan that would allow us  
15      to shut down both Hunter's Point and Potrero.  
16      Please wait till the City finishes its policy  
17      before the hearing.

18              His second point is the EPA has a duty  
19      to inform this process. All decisions should wait  
20      until they have a chance to go through their  
21      process and make a recommendation.

22              I have a card from Deborah Baron,  
23      B-a-r-o-n. The FSA does not review, analyze or  
24      assess the impacts of the UCSF Mission Bay  
25      project. It will employ and house tens of

1 thousands, and include a hospital. Lacking are  
2 the air quality, hazardous materials and waste  
3 management impacts of this large scale  
4 development. The FSA and others have not looked  
5 at the cumulative impacts of these toxins in  
6 conjunction with the power plant.

7 PRESIDING MEMBER PERNELL: What project  
8 is that? U-F-F --

9 MS. MENDONCA: UCSF Mission Bay project.

10 PRESIDING MEMBER PERNELL: Okay.

11 MS. MENDONCA: This one is from Kristin  
12 Casper, C-a-s-p-e-r. And Kristin is spelled with  
13 a K. It is critical for the Commissioners to wait  
14 to hold the hearings until the EPA and the NMFS  
15 finish endangered species review.

16 And this one is from Marie Harrison.  
17 Harrison is spelled H-a-r-r-i-s-o-n. As a member  
18 of the community that will have to pay the  
19 physical costs of your decision, as a member of  
20 the community I ask you to wait for all of the  
21 information. Give us a chance to review it so  
22 that we can know what, if any, future we may have  
23 in this City. If you go forward without all the  
24 facts you will do us a disservice, and one that  
25 we, as a community, will not forget anytime soon.

1 After all, it's truly about our lives and the  
2 lives of our children both now, and those to come.

3 I also want to express my great  
4 displeasure that you called for a break in  
5 tonight's meeting for ten minutes, but it took 20  
6 minutes. That matters to me now, since I'm paying  
7 for child care and I cannot stay. Some of us are  
8 not being paid to be here nor cover the costs of  
9 child care from 7:00 to 9:00. I came to speak for  
10 my children, and I wish you'd given me the chance.

11 And that's the cards I have.

12 PRESIDING MEMBER PERNELL: Okay, thank  
13 you. Those that would like to address the  
14 Committee please come forward.

15 I would ask you to state your name for  
16 the record.

17 MR. WEEKS: Hi, my name is Chris Weeks.  
18 I'm a member of the community, I live in Bernal  
19 Heights. I'd just like to, a couple things first,  
20 express my extreme confusion as to why you save  
21 public comment till last. It would have made a  
22 lot of sense that before you went through that  
23 tedious task that you guys had to go through  
24 finding out how much time each person is going to  
25 be spending during the trial session, if you could

1 have had some public comment at that point.

2 There were many people here who didn't  
3 fill out cards and had to leave. And I just don't  
4 understand why, if you really are interested in  
5 finding out information, why you made it so that  
6 the people who have the information to give you  
7 were forced to leave because they couldn't sit  
8 through all that, or couldn't understand a lot of  
9 it. Because we aren't lawyers, we're just people  
10 who have other jobs and have lives, too.

11 And also I'd like to duplicate what was  
12 said before, we aren't paid to be here either, and  
13 we've been here since 7:00.

14 I was also upset that you moved the  
15 meeting to here, took it out of the community in  
16 which the power plant is planned to go into. A  
17 lot of people went to the meetings in Potrero  
18 Hill. There were fewer here tonight because it's  
19 harder to get here. So I'd like that to be part  
20 of the record.

21 Thirdly, I think it would be a waste of  
22 time and money to proceed without all the  
23 information. I think land use, air, aquatic  
24 biology, endangered species, all of those are  
25 interrelated, and they all need to be weighed in

1 your decision.

2 I was upset with your discussion of  
3 short lists because I think that what was going on  
4 there is you were trying to break up the debate  
5 and the way that people are going to be talking  
6 about these issues, simplifying it and separating  
7 it. Because all these issues are interrelated.

8 I think I definitely support waiting  
9 until we get the EPA's opinion on endangered  
10 species. I can't understand how you could make an  
11 educated decision without this information. So I  
12 definitely support option two as a member of the  
13 public.

14 I understand your desire to move the  
15 project forward, but I don't understand why you  
16 think you can do so without the information. I  
17 think that's irresponsible; it doesn't make any  
18 sense why you'd want to move forward without  
19 finding out the effects of this power plant. I  
20 don't know why you aren't interested in this data.  
21 It doesn't make any sense to me.

22 I want this information, I think you  
23 guys need it. And from what Mirant has said, they  
24 said that they're pretty sure that it's not going  
25 to affect anything, so I don't know why they

1       wouldn't want it, too.

2               So I would recommend going with option  
3       two. And I wish that in the future you would try  
4       to have public comment before you go through this  
5       tedious task of talking about how much time each  
6       person is going to be spending in court.

7               I'd really appreciate it if you could  
8       explain why you waited so long for public comment.  
9       Does anybody want to address that?

10              PRESIDING MEMBER PERNELL: Yes, I can  
11      address that. First of all, let me just say that  
12      we've been to Potrero Hill I think three times,  
13      and we're here now. The Warren Alquist Act  
14      doesn't require us to be here at all. We could be  
15      sitting in Sacramento and have people that are  
16      interested on the speakerphone.

17              So, we're all being inconvenienced. I  
18      know that there's a lot of interest in this  
19      project from the community, from the City and from  
20      intervenors, but there is nothing that requires us  
21      to be here. We're doing this because we want to  
22      be accessible to the community and hear your  
23      concerns.

24              But, you know, we can have these  
25      hearings at 1:00 in the afternoon sitting in

1 Sacramento, and we're not doing that. So before  
2 you come and beat us up for not letting the public  
3 speak first, let me assure you that we don't have  
4 to be here at all. We can conduct the business in  
5 Sacramento and get it done just as efficiently  
6 without being inconvenienced, ourselves.

7 I think that the dedication of this  
8 Committee and Commission and our Public Adviser by  
9 going out into the neighborhoods, rather than, you  
10 know, being criticized, should be applauded.  
11 Because let me tell you, this is something we  
12 don't have to do.

13 MR. WEEKS: Okay, I think you mis-heard  
14 what I said. I wasn't saying that you needed the  
15 public to go first.

16 PRESIDING MEMBER PERNELL: Right, I  
17 understand that.

18 MR. WEEKS: I didn't say that. What I  
19 said was that I thought it would make sense if the  
20 public went just after you had the testimony of  
21 the expert people who are here in the front of the  
22 room, gave the public a chance to speak after  
23 that. And then you could deal with the policy  
24 issues that you dealt with, you know, before the  
25 public after that.



1           So, maybe in the future -- I know  
2       there's a lot of people who plan to attend these  
3       meetings in the future, so maybe if you have those  
4       kind of technical issues to work out, you might  
5       want to save those till after public comment.

6           I appreciate that you're coming out into  
7       the community, and I think that that's, as having  
8       aspirations, myself, of maybe some day serving as  
9       a public official, I think that it's important and  
10      admirable profession, and also your goal of  
11      including the community, I think is essential to  
12      your job functions.

13          I just expect that's what you're going  
14      to be doing. So, I'm sorry about that. And that  
15      to you it seems like something that you're doing  
16      as a favor to us. But it's not, it's your job.  
17      So I hope that in the future you see it that way.  
18      But for now, at least try to include public  
19      comment in a position where the public can endure  
20      the wait and give you the information that you  
21      need to make your decisions.

22          Thank you.

23          PRESIDING MEMBER PERNELL: Right. Thank  
24      you for your comment.

25          MS. SHORE: Hi, my name is Allison

1 Shore. I'm half-asleep, so excuse me. Thanks for  
2 letting us comment.

3 In a nutshell I just wanted to come out  
4 as a member of the public to say I also support  
5 option two, meaning I would really like to have  
6 all the information and to know that those of you  
7 who are out looking for our interests have all of  
8 the information from all of the relevant agencies  
9 before proceeding.

10 I do think it's already taken, I mean I  
11 understand you're really wanting to move on with  
12 it, because I think it's already taken a lot of  
13 people's time, the public, all of the agencies,  
14 all of these groups. Let's not waste any more  
15 time with hearings, and then have to stop and  
16 start over. Let's not waste any more resources;  
17 let's just get all the cards on the table, know  
18 what we're dealing with and then move forward.

19 So I just would like to urge you to go  
20 for option two. And also to wait to see what --  
21 how the chips are going to fall with the City  
22 energy plan, and if that will be ratified, or what  
23 will be ratified from the board of supervisors.  
24 Because I think that we are trying to work on  
25 coming up with a vision for what our energy future

1 for San Francisco should be, and that should be  
2 part of the information, as well as the biological  
3 information that's still outstanding.

4 And then I just wanted to add one small  
5 piece, just about public comment, because I am  
6 tired, as well. Just that this is our first time.  
7 I have gone to the other ones at the Neighborhood  
8 House, and was glad to see you all there.

9 This is our first time actually that  
10 we've had an opportunity that I'm aware of to be  
11 on record. There was no recording available to us  
12 earlier at any of those community meetings. So  
13 this was our first opportunity that I'm aware of  
14 to actually be recorded and added into the record.  
15 So it was important to us for that reason.

16 So, thank you.

17 PRESIDING MEMBER PERNELL: Let me  
18 explain. The meeting that you were at that wasn't  
19 recorded was probably a workshop, not a Committee  
20 hearing.

21 MS. SHORE: I understand.

22 PRESIDING MEMBER PERNELL: And they are  
23 two different meetings.

24 MS. SHORE: Right, right, I understand.  
25 No, it's great, I mean it was your staff and they

1       came and they listened. But it was my  
2       understanding that they, you know, they could  
3       listen or not listen. But because it wasn't part  
4       of the formal hearing process, that it was, in  
5       fact, a different type of meeting.

6               So from where I'm sitting this is our  
7       first opportunity moving into the more formal  
8       process to actually have a voice. And so that's  
9       why it would be nice to have a little bit more  
10      public able to speak, since we are moving into the  
11      more formal section of this process.

12             PRESIDING MEMBER PERNELL: And it won't  
13      be your last. We will be in the community because  
14      the community is concerned about this. I was just  
15      making the point that we don't have to be.

16             MS. SHORE: Thank you.

17             MR. THOMAS: Good evening, my name is  
18      Mike Thomas. I'm with Communities for a Better  
19      Environment, and I also live in Potrero Hill.

20             Unfortunately, there was over 20  
21      residents that wanted to give the Commissioners an  
22      update about what's happened since the last time  
23      you were down here. So I'll make it as brief as  
24      possible.

25             I think the last time you were down here

1 for official business was in August, and since  
2 that time CBE and the City has settled its lawsuit  
3 against Mirant regarding their peakers, or their  
4 peaker power plants. Mirant had been running  
5 their plants longer than allowed by state law.

6 In addition to that, in November San  
7 Francisco voters overwhelmingly approved two solar  
8 power bond measures. Mirant's project could limit  
9 the City's ability to put these renewable energy  
10 resources into place.

11 And then you've heard about the City's  
12 energy plan that shows that you can close down  
13 Hunter's Point without the proposed Potrero Power  
14 Plant. So I know residents are very excited about  
15 that piece of information, as well.

16 And then in January through March Mirant  
17 recently reported that it has a net loss of \$42  
18 million and its revenues have fallen 14 percent.  
19 In the last six months Mirant's stock has dropped  
20 53 percent. So the question if Mirant would build  
21 this power plant, even if it was certified, I  
22 think is still an open question.

23 Just a couple final comments just  
24 regarding the significance about this once-through  
25 cooling system. We're talking about 50 million

1 gallons of water a day, 50 million gallons of  
2 water a day would go through that expanded Potrero  
3 Power Plant. For 40 years. This is a 40-year  
4 project.

5 So, I agree it's a long process, but  
6 again, we're talking about 50 million -- I'm  
7 sorry, 500 million gallons of water a day for 40  
8 years.

9 And then regarding the common mode  
10 failure, yes, I'm glad to hear that there's  
11 progress on that. I think it is a major  
12 unresolved issue. I know we've been talking about  
13 the once-through cooling system, but this, I  
14 think, is just as large of an issue as the once-  
15 through cooling system.

16 And then I think finally I just wanted  
17 to, in the spirit of a thousand kids that go to  
18 school within one and a half miles of this power  
19 plant, and the two out of ten children in Bay  
20 View/Hunter's Point elementary schools that have  
21 asthma, we are just asking Commissioners Pernell  
22 and Commissioner Keese to please hold off and wait  
23 until the EPA has finished its endangered species  
24 review. And please wait in holding the hearings  
25 until the City's energy plan is completed.

1           And then finally I just wanted to submit  
2       70 post cards to the Commissioners that were  
3       recently signed by residents in Potrero and Bay  
4       View/Hunter's Point in opposition to this project.

5           So, --

6           PRESIDING MEMBER PERNELL:   Okay, you can  
7       bring those up.   Give them to Ms. Mendonca and  
8       we'll make them part of the record.

9           MR. THOMAS:   Okay, thank you.

10          PRESIDING MEMBER PERNELL:   Is there  
11       anyone else?   Is there any other business to come  
12       before this Committee?

13          MR. CARROLL:   I have one issue; I  
14       apologize for keeping us here even one minute  
15       longer.   We did not identify some of the parties  
16       need specific dates that we were not available,  
17       and of course, we don't have a good sense of what  
18       the Committee might come up with in terms of  
19       proposed schedule.

20          I do have a personal constraint in the  
21       month of August.   And we're hopeful that we'll be  
22       done with the hearings by August, but the middle  
23       two weeks of August are problematic for me for  
24       personal reasons.

25          PRESIDING MEMBER PERNELL:   We will -- so

1       you're only talking about two weeks in August, not  
2       the whole month?

3               MR. CARROLL: Well, my wife and I are  
4       expecting a baby on August 12th. So if it holds  
5       to schedule, it should just be the middle of the  
6       month.

7               PRESIDING MEMBER PERNELL: It never  
8       holds to schedule.

9               (Laughter.)

10              PRESIDING MEMBER PERNELL: The Committee  
11       will certainly consider that, really.

12              Congratulations.

13              MR. CARROLL: Thank you.

14              PRESIDING MEMBER PERNELL: Anything  
15       else? Thank you all for coming and being patient  
16       with us.

17              We are adjourned.

18              (Whereupon, at 11:05 p.m., the  
19       conference was concluded.)

20                       --o0o--



## CERTIFICATE OF REPORTER

I, DUNCAN FANKBONER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of May, 2002

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